

Senate Bill 242

By: Senators Cowser of the 46th, Gooch of the 51st, Kennedy of the 18th, Brass of the 28th, Albers of the 56th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 12 of Title 15 of the Official Code of Georgia Annotated,
2 relating to grand juries, so as to provide for a state grand jury; to provide for its creation,
3 selection, composition, compensation, procedures, and term; to provide for definitions; to
4 provide for a foreperson and deputy foreperson; to provide for certain disqualifications and
5 recusals; to provide for certain oaths; to provide for a legal advisor; to provide secrecy of
6 proceedings; to provide for sanctions for violations; to provide for subpoenas and compelling
7 the production of evidence and testimony; to provide for assistance; to provide for the
8 promulgation of rules and regulations by the Supreme Court; to provide for legislative
9 findings; to provide a short title; to provide for related matters; to provide a contingent
10 effective date and automatic repeal; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 4 of Chapter 12 of Title 15 of the Official Code of Georgia Annotated, relating to
14 grand juries, is amended by adding a new part to read as follows:

S. B. 242

15

"Part 316 15-12-105.

17 (a) This part shall be known and may be cited as the 'State Grand Jury Act,' and any state
18 grand jury which may be convened as provided herein shall be known as a 'State Grand
19 Jury of Georgia.'

20 (b) The General Assembly finds that there is a need to enhance the grand jury system to
21 improve the ability of the state to detect and eliminate violations of the election laws of this
22 state and other crimes related to voting and elections. Crimes involving voting, elections,
23 or violations of the election laws of this state and related crimes transpire at times in a
24 single county, but often transpire or have significance in more than one county of this state.
25 In addition, such crimes have an impact on all the citizens of Georgia. The right to vote
26 is precious, sacred, and the most powerful nonviolent tool or instrument available to
27 guarantee freedom and liberty. The commission of such crimes in one county may affect
28 state-wide elections. Furthermore, criminal conduct with regard to voting and elections
29 serves to undermine the confidence that citizens have in the results of the elections and the
30 legitimacy of those elected which erodes the legitimacy of our government. The General
31 Assembly believes that a state grand jury, possessing considerably broader investigative
32 authority than individual county grand juries, should be available to investigate crimes
33 involving voting, elections, or violations of the election laws of this state and all related
34 crimes in Georgia.

35 (c) This part shall not limit the authority of a county grand jury, district attorney, or other
36 appropriate law enforcement personnel to investigate, indict, or prosecute offenses within
37 the jurisdiction of the state grand jury.

38 15-12-106.

39 For purposes of this part, the term 'crimes involving voting, elections, or violations of the
40 election laws of this state and all related crimes' means any unlawful activity, under color
41 of or in connection with any primary, election, or runoff, involving a violation of the
42 election laws of this state and all offenses related thereto.

43 15-12-107.

44 (a) When the Attorney General determines that the need exists for the creation of a state
45 grand jury to investigate and consider indictments or special presentments within the
46 jurisdiction of such state grand jury, the Attorney General shall petition the Supreme Court
47 of Georgia for the impaneling of a state grand jury. Such petition shall set forth the need
48 for such state grand jury and the basis for its investigation. Such petition shall be placed
49 under seal by the Supreme Court and the contents of such petition shall not be disclosed
50 to the public.

51 (b) If a majority of the justices of the Supreme Court find that there is a need for the
52 impaneling of a state grand jury, the Chief Justice of the Supreme Court shall enter an order
53 calling for the impaneling of a state grand jury and shall appoint a judge of the superior
54 court to preside over such state grand jury. The clerk of the State-wide Business Court
55 provided for in Code Section 15-5A-11 shall be clerk for such state grand jury.

56 15-12-108.

57 (a) There is established a state grand jury system. Each state grand jury shall consist of
58 not less than 13 nor more than 23 persons who shall meet in any suitable place in this state
59 designated by the superior court judge designated by the Chief Justice of the Supreme
60 Court to act as presiding judge for each state grand jury in which the Attorney General
61 seeks to have impaneled. Each person serving as a state grand juror shall:

- 62 (1) Be a citizen of this state and the United States, 18 years of age or older, and have
63 resided in the State of Georgia for at least six months prior to serving on such state grand
64 jury;
- 65 (2) Not be a person who holds any elective office in state or local government or who has
66 held any such office within a period of two years preceding the time of serving on such
67 state grand jury;
- 68 (3) Not have been convicted of a felony in a state or federal court who has not had his
69 or her civil rights restored;
- 70 (4) Not have been judicially determined to be mentally incompetent;
- 71 (5) Not have been charged with a felony offense and who is in a pretrial release program,
72 a pretrial release and diversion program, or a pretrial intervention and diversion program,
73 as provided for in Article 4 of Chapter 18 of Title 15 or Article 4 of Chapter 3 of Title 42
74 or pursuant to Uniform Superior Court Rule 27, a similar diversion program from another
75 state, or a similar federal court diversion program for a felony offense;
- 76 (6) Not have been sentenced for a felony offense pursuant to Code Section 16-13-2 and
77 has not completed the terms of his or her sentence;
- 78 (7) Not be serving a sentence for a felony offense pursuant to Article 3 of Chapter 8 of
79 Title 42 or serving a first offender sentence for a felony offense pursuant to another state's
80 law; and
- 81 (8) Not be participating in a drug court division, mental health court division, veterans
82 court division, a similar court program from another state, or a similar federal court
83 program for a felony offense.
- 84 (b) The jurisdiction of a state grand jury impaneled pursuant to this part extends
85 throughout the state. The subject matter jurisdiction of a state grand jury in all cases is
86 limited to violations and attempted violations of law regarding voting, elections, or
87 violations of the election laws of this state and all related crimes.

88 (c) A state grand jury may return indictments or special presentments irrespective of the
89 county or judicial circuit where the offense is committed or triable. If an indictment or
90 special presentment is returned, it shall be certified and transferred for prosecution to the
91 county where venue is appropriate under Georgia law for prosecution by the Attorney
92 General or his or her designee. The powers and duties of and the law applicable to county
93 grand juries shall apply to a state grand jury, except when such powers and duties are
94 inconsistent with the provisions of this part.

95 (d) In order to return a true bill of indictment or special presentment, twelve or more state
96 grand jurors must find that probable cause exists for the indictment or special presentment
97 and vote in favor of it. Upon indictment or special presentment by a state grand jury, the
98 indictment or special presentment shall be returned to the presiding judge. If the presiding
99 judge considers the indictment or special presentment to be within the authority of the state
100 grand jury and otherwise in accordance with the provisions of this part, he or she shall
101 return the indictment or special presentment by order to the county where venue is
102 appropriate under law for prosecution by the Attorney General or his or her designee. The
103 presiding judge may direct that the indictment or special presentment be kept secret until
104 the defendant is in custody or has been released pending trial. Thereupon, the clerk of the
105 state grand jury shall seal the indictment or special presentment, and no person shall
106 disclose the return of the indictment or special presentment except when necessary for the
107 issuance and execution of a warrant. A true bill returned by the state grand jury on any
108 count of an indictment or special presentment shall be published in open court in the county
109 in which such indictment or special presentment is returned by the presiding judge for
110 prosecution; provided, however, that, if such indictment or special presentment is under
111 seal by order of the presiding judge, such indictment or special presentment shall be
112 published in open court only following such indictment or special presentment being
113 unsealed following the arrest of the defendant or the release of the defendant pending trial.

114 A no bill on all counts of an indictment or special presentment shall be filed with the clerk
115 of the state grand jury by the prosecuting attorney.

116 15-12-109.

117 (a) The Attorney General or his or her designee shall attend sessions of a state grand jury
118 and shall serve as its legal advisor. The Attorney General or his or her designee shall
119 examine witnesses, present evidence, and draft indictments, special presentments, and
120 reports upon the direction of a state grand jury.

121 (b) In all investigations of the crimes specified in Code Section 15-12-106, except in
122 matters where a district attorney or his or her staff is the subject of such investigation, the
123 Attorney General shall consult with the appropriate district attorney of the jurisdiction
124 where the crime or crimes occurred. After such consultation, the Attorney General shall
125 determine whether the investigation should be presented to a county grand jury or whether
126 to initiate a state grand jury investigation.

127 (c) When the Attorney General determines that he or she should recuse himself or herself
128 from participation in a state grand jury investigation and prosecution, the Attorney General
129 may either refer the matter to a district attorney for investigation and prosecution, or
130 remove himself or herself entirely from any involvement in the case and designate a
131 prosecutor to assume his or her functions and duties pursuant to this part. When a district
132 attorney determines that he or she should recuse himself or herself from participation in a
133 state grand jury matter, the Attorney General shall conduct such investigation and
134 prosecution but the Attorney General, in his or her discretion, may designate another
135 district attorney or appoint a special prosecutor not subject to a conflict to handle or assist
136 him or her in the state grand jury investigation, as the Attorney General deems appropriate.

137 (d)(1) A hearing on a motion to disqualify the Attorney General or legal advisor for the
138 state grand jury from a state grand jury investigation shall be held in public; provided,
139 however, that the presiding judge shall conduct such hearing in a manner to ensure the

140 secrecy and integrity of the investigation. The presiding judge shall protect the identity
141 of the person or persons being investigated to the extent practicable. In order to
142 disqualify the Attorney General or legal advisor for the state grand jury, the presiding
143 judge shall find an actual conflict of interest resulting in actual prejudice against the
144 moving party. If the Attorney General or legal advisor for the state grand jury or a
145 member of the staff is disqualified, then the Attorney General shall refer the matter to a
146 district attorney for investigation and prosecution. If a district attorney or special
147 prosecutor, or member of the staff of a district attorney or special prosecutor, is
148 disqualified, the matter shall be referred to the office of the Attorney General for
149 investigation or prosecution.

150 (2) An order to disqualify the Attorney General or legal advisor for the state grand jury
151 from a state grand jury investigation, entered prior to the issuance of an indictment or
152 arrest warrant, shall become effective not less than ten days after the date issued and
153 notice is given to the Attorney General or such legal advisor unless appealed. If an
154 appeal from the order is made, the state grand jury and the Attorney General or legal
155 advisor for the state grand jury shall continue to exercise his or her powers pending
156 disposition of the appeal, except as is otherwise ordered by the Supreme Court. The
157 Supreme Court shall handle all appeals from this Code section in an expedited manner.

158 (3) The state grand jury may continue with its investigation and the Attorney General or
159 the district attorney or his or her designee may continue to serve as legal advisor to the
160 state grand jury with all authority, functions, and responsibilities set forth in this part until
161 the final order becomes effective or upon the issuance of the final order of the Supreme
162 Court, if appealed, whichever occurs later.

163 15-12-110.

164 (a) Upon the Supreme Court ordering a term of a state grand jury upon the petition of the
165 Attorney General and the appointment of a presiding judge, the presiding judge shall direct

166 the clerk of the state grand jury to randomly draw the names of 60 persons from the
167 state-wide master jury list provided for in Code Section 15-12-40.1 and summon such
168 individuals to attend the jury selection process for the state grand jury. The jury selection
169 process shall be conducted by the presiding judge. The clerk of the state grand jury shall
170 issue his or her writ of venire facias for such persons, requiring their attendance at the time
171 designated. The writ of venire facias shall be delivered immediately to the sheriff of the
172 county where each person resides and served as provided by law. From the 60 persons so
173 summoned, a state grand jury for that term of not less than 13 nor more than 23 persons
174 shall be impaneled in the same manner as jurors are impaneled for service on a county
175 grand jury. Nothing in this Code section shall be construed to limit the right of the
176 Attorney General or his or her designee to request that a potential state grand juror be
177 excused for cause. Jurors of a state grand jury shall receive a daily subsistence expense
178 equal to the maximum allowable for the Atlanta, Georgia, area, by regulation of the
179 Internal Revenue Code when summoned or serving, and also shall be paid the same per
180 diem and mileage as are members of state boards, commissions, and committees.

181 (b) The presiding judge shall appoint one of the jurors to be foreperson and another to be
182 deputy foreperson. During the absence of the foreperson, the deputy foreperson shall act
183 as foreperson of the jury.

184 (c) The Attorney General or his or her designee shall coordinate the scheduling of
185 activities of any state grand jury.

186 (d) When the presiding judge assigned to a state grand jury determines that the state grand
187 jury's investigation has been completed or on the issuance of a report by the state grand
188 jury of the matter or matters being investigated by it that the investigation has been
189 completed, the presiding judge shall recommend to the Chief Justice of the Supreme Court
190 that the state grand jury be dissolved. The Chief Justice shall report the recommendation
191 to the other justices of the Supreme Court and, upon a majority thereof voting in favor of
192 the dissolution of the state grand jury, the state grand jury shall stand dissolved. If a

193 majority of the justices do not vote in favor of the dissolution of the state grand jury, the
194 Chief Justice shall advise the presiding judge who shall instruct and charge the state grand
195 jury as to the particular matters to be investigated and the state grand jury shall be required
196 to complete the further investigation. In no event shall the term of service for a state grand
197 jury exceed 12 months.

198 15-12-111.

199 (a) The clerk of the state grand jury, upon the request of the Attorney General or his or her
200 designee, shall issue subpoenas or subpoenas for production of evidence to compel
201 individuals, documents, or other materials to be brought from anywhere in this state to a
202 state grand jury. In addition, a state grand jury may proceed in the same manner as
203 provided by Chapter 13 of Title 24. The subpoenas and subpoenas for production of
204 evidence may be for investigative purposes and for the retention of documents or other
205 materials so subpoenaed for proper criminal proceedings. Any law enforcement officer
206 with appropriate jurisdiction is empowered to serve such subpoenas and subpoenas for
207 production of evidence and receive the documents and other materials for return to a state
208 grand jury. Any person violating a subpoena or subpoena for production of evidence
209 issued pursuant to this part, or who fails to fully answer all questions put to him or her
210 before proceedings of a state grand jury where the response thereto is not privileged or
211 otherwise protected by law, including the granting of immunity as authorized by Code
212 Section 24-5-507, may be punished by the presiding judge for contempt. To this end,
213 where the violation or failure to answer is alleged to have occurred, the Attorney General
214 or his or her designee may petition the presiding judge to compel compliance by the person
215 alleged to have committed the violation or who has failed to answer. If the presiding judge
216 considers compliance is warranted, he or she may order this compliance and may punish
217 the individual for contempt where the compliance does not occur.

218 (b) The clerk of the state grand jury also may issue subpoenas and subpoenas for
219 production of evidence to compel individuals, documents, or other materials to be brought
220 from anywhere in this state to the trial of any indictment returned by a state grand jury or
221 the trial of any civil forfeiture action arising out of an investigation conducted by a state
222 grand jury.

223 (c) If any person asks to be excused from testifying before a state grand jury or from
224 producing any books, papers, records, correspondence, or other documents before a state
225 grand jury on the ground that the testimony or evidence required of him or her may tend
226 to incriminate him or her or subject him or her to any penalty or forfeiture and is
227 notwithstanding directed by the presiding judge to give the testimony or produce the
228 evidence, he or she shall comply with this direction, but no testimony so given or other
229 information produced, or any information directly or indirectly derived from such
230 testimony or such other information, may be received against him or her in any criminal
231 action, criminal investigation, or criminal proceeding. No individual testifying or
232 producing evidence or documents is exempt from prosecution or punishment for any
233 perjury committed by him or her while so testifying, and the testimony or evidence given
234 or produced is admissible against him or her upon any criminal action, criminal
235 investigation, or criminal proceeding concerning this perjury; provided, however, that any
236 individual may execute, acknowledge, and file a statement with the appropriate court
237 expressly waiving immunity or privilege with respect to any testimony or evidence given
238 or produced and thereupon the testimony or evidence given or produced may be received
239 or produced before any judge or justice, court, tribunal, grand jury, or otherwise, and if so
240 received or produced, the individual shall not be entitled to any immunity or privilege on
241 account of any testimony he or she may give or evidence produced.

242 15-12-112.

243 Once a state grand jury has entered into a term, the Attorney General or district attorney,
244 in the appropriate case, may notify the presiding judge in writing as often as is necessary
245 and appropriate that the state grand jury's areas of inquiry have been expanded or additional
246 areas of inquiry have been added thereto.

247 15-12-113.

248 (a)(1) Prior to impaneling, swearing, and charging the state grand jury, the presiding
249 judge and the district attorney may examine prospective state grand jurors as to their
250 qualifications to serve as provided in Code Sections 15-12-4 and 15-12-60. Such
251 examination shall be conducted after the administration of the preliminary oath set forth
252 in paragraph (2) of this subsection. Any prospective state grand juror who is not qualified
253 to serve shall be excused by the presiding judge.

254 (2) Prior to examination, the presiding judge, the district attorney, or the clerk shall
255 administer the following oath or affirmation to prospective state grand jurors:

256 'You shall give true answers to all questions as may be asked by the court or the district
257 attorney concerning your qualifications to serve as a state grand juror.'

258 (b) When, from challenge or from any other cause, there is not a sufficient number of
259 persons in attendance to complete the impaneling of state grand jurors, the presiding judge
260 shall order the clerk to choose at random from the state-wide master jury list provided for
261 in Code Section 15-12-40.1 a sufficient number of prospective state grand jurors necessary
262 to complete the state grand jury. Nothing in this Code section shall be construed as barring
263 the court from taking any action against a person who has been summoned to appear as a
264 juror as provided in Code Section 15-12-10.

265 (c) The following oath shall be administered to the foreperson and to each member of the
266 state grand jury:

267 'You, as foreperson (or member) of the state grand jury for the State of Georgia, shall
268 diligently inquire and true presentment make of all such matters and things as shall be
269 given you in the court's charge or shall come to your knowledge touching the present
270 service; and you shall keep the deliberations of the state grand jury secret unless called
271 upon to give evidence thereof in some court of law in this state. You shall present no one
272 from envy, hatred, or malice, nor shall you leave anyone unrepresented from fear, favor,
273 affection, reward, or the hope thereof, but you shall present all things truly and as they
274 come to your knowledge. So help you God.'

275 (d) The foreperson shall administer the following oath or affirmation to any witness who
276 testifies before a state grand jury:

277 'Do you solemnly swear or affirm that the evidence you shall give the state grand jury
278 shall be the truth, the whole truth, and nothing but the truth? So help you God.'

279 Any oath given that substantially complies with the language in this subsection shall
280 subject the witness to the provisions of Code Section 16-10-70.

281 15-12-114.

282 (a) State grand jury proceedings shall be secret, and no state grand juror shall disclose the
283 nature or substance of the deliberations or vote of the state grand jury. The only persons
284 who may be present in the state grand jury room when a state grand jury is in session,
285 except for deliberations and voting, are the state grand jurors, the Attorney General or his
286 or her designee, a court reporter if present, an interpreter if necessary, and the witness
287 testifying. A state grand juror, the Attorney General or his or her designee, any interpreter
288 used, any court reporter present, and any person to whom disclosure is made pursuant to
289 paragraph (2) of subsection (b) of this Code section may not disclose the testimony of a
290 witness examined before a state grand jury or other evidence received by it except when
291 directed by a court for the purpose of:

292 (1) Ascertaining whether it is consistent with the testimony given by the witness before
293 the court in any subsequent criminal proceeding;

294 (2) Determining whether the witness is guilty of perjury;

295 (3) Assisting local, state, other state or federal law enforcement or investigating agencies,
296 including another grand jury, in investigating crimes under their investigative
297 jurisdiction;

298 (4) Providing the defendant the materials to which he or she is entitled pursuant to law;
299 or

300 (5) Complying with constitutional, statutory, or other legal requirements or to further
301 justice.

302 If the court orders disclosure of matters occurring before a state grand jury, such disclosure
303 shall be made in the manner, at the time, and under such conditions as the court directs.

304 The court shall grant a request made by the Attorney General pursuant to this subsection
305 in an expedited manner so as not to interfere with or delay the operation of the state grand
306 jury or its legal advisor when the requested disclosure is authorized by this subsection.

307 (b) Disclosure of testimony of a witness examined before a state grand jury or other
308 evidence received by it may be made without being directed by a court to:

309 (1) The Attorney General or his or her designee for use in the performance of their
310 duties; and

311 (2) Those governmental personnel, including personnel of the state or its political
312 subdivisions, as are considered necessary by the Attorney General or his designee to
313 assist in the performance of their duties to enforce the criminal laws of this state;
314 provided, however, that any person to whom matters are disclosed under this paragraph
315 shall not utilize that state grand jury material for purposes other than assisting the
316 Attorney General or his or her designee in the performance of their duties to enforce the
317 criminal laws of this state. The Attorney General or his or her designee promptly shall
318 provide the presiding judge before whom was impaneled the state grand jury whose

319 material has been disclosed, the names of the persons to whom the disclosure has been
320 made, and shall certify that he or she has advised such persons of their obligation of
321 secrecy under this Code section.

322 (c) Nothing in this Code section shall affect the attorney-client relationship. A client has
323 the right to communicate to his or her attorney any testimony given by the client to a state
324 grand jury, any matters involving the client discussed in the client's presence before a state
325 grand jury, and evidence involving the client received by or proffered to a state grand jury
326 in the client's presence.

327 (d) State grand jurors, the Attorney General or his or her designee, any court reporter used,
328 any interpreter used, and the clerk of the state grand jury shall be sworn to secrecy and also
329 may be punished for criminal contempt for violations of this Code section. Once he or she
330 is sworn to secrecy, the clerk of the state grand jury is authorized, only if requested by the
331 Attorney General or his or her designee, to give the oath of secrecy to members of the
332 Attorney General's staff; experts or other individuals contracted by the Attorney General
333 or law enforcement for assistance in a state grand jury investigation; federal, state, or local
334 prosecutors and their staff; and federal, state, or local law enforcement officers and their
335 staff. Once he or she is sworn, the clerk of the state grand jury is authorized at any time
336 to give the oath of secrecy to members of his or her own staff or to a court reporter.

337 (e) Records, orders, and subpoenas relating to state grand jury proceedings shall be kept
338 under seal to the extent and for that time as is necessary to prevent disclosure of matters
339 occurring before a state grand jury.

340 (f) It shall not be necessary for a proposed bill of indictment to be presented to a state
341 grand jury prior to its engaging in investigative activities within its jurisdiction.

342 (g) Any person violating the provisions of this Code section shall be guilty of a
343 misdemeanor.

344 15-12-115.

345 (a) Except for the prosecution of cases arising from indictments or special presentments
346 issued by the state grand jury, and subject to the provisions and standards provided in this
347 part, the presiding judge has jurisdiction to hear all matters arising from the proceedings
348 of a state grand jury, including, but not limited to, matters relating to the impanelment or
349 removal of state grand jurors, the quashing of subpoenas, the punishment for contempt, and
350 the matter of bail for persons indicted by a state grand jury.

351 (b) A person indicted by a state grand jury for a bailable offense shall have a bond hearing
352 before the end of the second business day following the day he or she was arrested in this
353 state for that offense or the day he or she was delivered within this state following
354 extradition for that offense from another state or jurisdiction, and shall be released within
355 a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating
356 facility. If the presiding judge or acting presiding judge is not available, the initial bond
357 hearing following arrest for a state grand jury indictment may be conducted by any superior
358 court judge of the county where the grand jury was impaneled. A business day pursuant
359 to this subsection is any day in which the county courthouse is open in the county where
360 the grand jury was impaneled.

361 15-12-116.

362 The Attorney General shall make available suitable space for state grand juries to meet.
363 The Department of Public Safety and the Georgia Bureau of Investigation also shall
364 provide service as the state grand juries require. The other costs associated with the state
365 grand jury system, including juror per diem, mileage, and subsistence shall be paid from
366 funds appropriated to the Attorney General's office for this purpose by the General
367 Assembly in the annual general appropriations Act. Nothing this Code section shall
368 authorize the Attorney General to expend general funds above the level of appropriations
369 authorized annually in the general appropriations Act or supplemental appropriation Act.

370 15-12-117.

371 The Supreme Court may promulgate rules and regulations as are necessary for the
372 operation of the state grand jury system established in this part."

373

SECTION 2.

374 This Act shall become effective on January 1, 2023, provided that a constitutional
375 amendment is passed by the General Assembly and ratified by the voters of this state in the
376 2022 November general election. Otherwise, this Act shall be repealed by operation of law
377 on such date.

378

SECTION 3.

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