

Senate Bill 405

By: Senator McKoon of the 29th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 15 of Title 45 of the Official Code of Georgia Annotated, relating to the
2 Attorney General, so as to establish the Office of the State Prosecutor; to provide for the
3 manner of appointment, term of office, qualifications, removal, filling of vacancies, duties,
4 powers, and procedures of the State Prosecutor; to provide for the State Prosecutor Selection
5 and Disabilities Commission and its membership, selection, and duties; to provide for
6 reports; to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Chapter 15 of Title 45 of the Official Code of Georgia Annotated, relating to the Attorney
10 General, is amended by revising Article 3, which is reserved, as follows:

11 "ARTICLE 3

12 45-15-50.

13 (a) There is established the Office of the State Prosecutor which shall be an independent
14 unit in the office of the Attorney General.

15 (b)(1) An individual shall be eligible to be appointed as the State Prosecutor only if the
16 individual:

17 (A) Executes an affidavit that the individual will not accept appointment to, or be a
18 candidate for, a state or local office during the period of service as the State Prosecutor
19 and for at least three years immediately after the individual last serves as the State
20 Prosecutor; and

21 (B) Has lawfully and actively practiced law in the State of Georgia for at least five
22 years.

23 (2) The State Prosecutor shall renew the affidavit every two years during his or her
24 period of service.

25 (3) A failure to renew the affidavit under this subsection shall subject the State
 26 Prosecutor to removal from office under this Code section.

27 (c)(1) The State Prosecutor shall be:

28 (A) Nominated by the State Prosecutor Selection and Disabilities Commission; and

29 (B) Appointed by the Governor with the advice and consent of the Senate.

30 (2) The term of the State Prosecutor shall be six years.

31 (3) At the end of a term, the State Prosecutor shall continues to serve until a successor
 32 is appointed and qualified.

33 (d) Only on the recommendation of the State Prosecutor Selection and Disabilities
 34 Commission, the Governor may remove the State Prosecutor for:

35 (1) Misconduct in office;

36 (2) Persistent failure to perform the duties of the office; or

37 (3) Conduct prejudicial to the proper administration of justice.

38 (e) The State Prosecutor shall receive a salary as provided in the state budget, but such
 39 salary shall not be less than the salary of a judge of a superior court.

40 45-15-51.

41 (a) There is created the State Prosecutor Selection and Disabilities Commission.

42 (b) The commission shall consist of:

43 (1) The Attorney General; and

44 (2) Six individuals appointed by the Governor as follows:

45 (A) Two individuals appointed from a list of two or more nominees submitted by the
 46 President of the Senate:

47 (i) Only one of whom may be a lawyer; and

48 (ii) None of whom shall be a member of the General Assembly or a full-time state
 49 employee;

50 (B) Two individuals appointed from a list of two or more nominees submitted by the
 51 Speaker of the House of Representatives:

52 (i) Only one of whom shall be a lawyer; and

53 (ii) None of whom shall be a member of the General Assembly or a full-time state
 54 employee;

55 (C) One individual who:

56 (i) Shall be appointed from a list of one or more nominees submitted by the Board
 57 of Governors of the State Bar of Georgia; and

58 (ii) Is a lawyer admitted to practice law in this state; and

59 (D) One individual who:

60 (i) Shall be appointed from a list of one or more nominees submitted by the
 61 governing board of the Prosecuting Attorneys' Council of the State of Georgia; and

62 (ii) Is a district attorney at the time of appointment and throughout the individual's
 63 term on the commission.

64 (c)(1) The Governor shall appoint the members of the commission from the nominees
 65 submitted to the Governor under this Code section.

66 (2) The Governor may reject an individual as a nominee only for cause.

67 (3) If the Governor rejects an individual as a nominee, the Governor shall request the
 68 appropriate nominating authority to submit another nominee.

69 (d)(1) The term of an appointed member shall be for four years; provided, however, that
 70 the initial terms of one of the members nominated by the President of the Senate, one of
 71 the members nominated by the Speaker of the House of Representatives, and the member
 72 who was nominated by the Board of Governors of the State Bar of Georgia shall be for
 73 two years. Thereafter, all members shall be appointed to a four-year term.

74 (2) An appointed member shall serve until his or her successor is appointed and
 75 qualified.

76 (3) An appointed member shall be eligible for reappointment.

77 (e) From among the members, the Governor shall designate the chairperson of the
 78 commission for the period that the Governor determines.

79 (f) A vacancy that occurs on the commission shall be filled by the Governor in the same
 80 manner as provided for appointments in this Code section.

81 (g) A member of the commission shall not receive compensation for serving on the
 82 commission but shall be entitled to reimbursement for expenses incurred in his or her
 83 service on the commission in accordance with standard state travel regulations.

84 45-15-52.

85 (a) On notification by the Governor that a vacancy exists or is about to occur in the
 86 position of State Prosecutor, the commission shall:

87 (1) Seek and review applications of proposed nominees;

88 (2) Notify and request recommendations from the State Bar of Georgia; and

89 (3) Seek recommendations from members of the commission and interested citizens and
 90 groups.

91 (b) The commission shall:

92 (1) Interview and evaluate each eligible applicant; and

93 (2) Nominate to the Governor, on a vote taken by secret ballot, one or more individuals
 94 whom a majority of the authorized membership of the commission finds to be legally and
 95 professionally qualified.

96 (c) The commission shall report, in writing, to the Governor the name of the individual or
 97 individuals it nominates within 70 days after notification that a vacancy exists or is about
 98 to occur.

99 (d)(1) The Governor may reject a nominee for cause.

100 (2) If a nominee is rejected for cause, the commission shall submit another nominee.

101 (3) If the Governor rejects a nominee:

102 (A) The Governor shall send to the commission a written statement that contains the
 103 reasons for the rejection; and

104 (B) A copy of the statement of rejection shall be furnished to the nominee.

105 (4) The statement shall be confidential and privileged, unless the privilege is deemed
 106 waived by the commission by the acts of the nominee in presenting to the public the
 107 reason for the rejection. In which case, the commission may make the statement public.

108 (e) The Governor shall exercise the power of appointment or rejection within 30 days after
 109 receipt of the commission's report.

110 45-15-53.

111 (a) The commission may reprimand or recommend to the Governor the removal of the
 112 State Prosecutor if, after a hearing, the commission finds that the State Prosecutor is guilty
 113 of:

114 (1) Misconduct in office;

115 (2) Persistent failure to perform the duties of the office; or

116 (3) Conduct prejudicial to the proper administration of justice.

117 (b)(1) Except as provided in paragraph (2) of this subsection, the proceedings, testimony,
 118 and other evidence before the commission shall be confidential and privileged.

119 (2) On taking final action, the commission may make its order and the proceedings,
 120 testimony, and other evidence public.

121 (c)(1) On complaint or on its own initiative, the commission may investigate allegations
 122 against the State Prosecutor that may warrant removal or reprimand.

123 (2) The commission may:

124 (A) Conduct hearings;

125 (B) Administer oaths and affirmations;

126 (C) Issue process to compel the attendance of witnesses and the production of
 127 evidence; and

128 (D) Require a person to testify and produce evidence by granting the person immunity
 129 from prosecution, penalty, or forfeiture.

130 45-15-54.

131 (a) Except as provided in subsection (b) of this Code section, the State Prosecutor may
 132 investigate:

133 (1) A criminal offense under Chapter 2 of Title 21;

134 (2) A criminal offense under Chapter 5 of Title 21 and Chapter 10 of this title;

135 (3) A violation of the state bribery laws in which an official or employee of the state, a
 136 political subdivision of the state, or authority or other instrumentality of the state was the
 137 offeror, offeree, or intended offeror or offeree of a bribe;

138 (4) An offense constituting criminal malfeasance, misfeasance, or nonfeasance in office
 139 committed by an officer or employee of the state, of a political subdivision of the state,
 140 or of an authority or other instrumentality of the state; and

141 (5) A violation of the state extortion, perjury, or obstruction of justice laws related to an
 142 activity described in this subsection.

143 (b) The State Prosecutor shall not investigate an offense alleged to have been committed
 144 by the State Prosecutor or a member of the State Prosecutor's staff.

145 (c) The State Prosecutor may investigate an alleged offense under subsection (a) of this
 146 Code section on the State Prosecutor's own initiative or on request of:

147 (1) The Governor;

148 (2) The Attorney General;

149 (3) The General Assembly;

150 (4) The Georgia Government Transparency and Campaign Finance Commission; or

151 (5) A district attorney.

152 (d) An individual who is advised by the State Prosecutor that such individual is under
 153 investigation under paragraph (4) of subsection (a) of this Code section may release this
 154 information to the public, as well as any results of the investigation that pertain to such
 155 individual.

156 45-15-55.

157 (a)(1) Except as provided in paragraph (2) of this subsection, if the State Prosecutor finds
 158 that an alleged violation of the criminal law set forth in Code Section 45-15-54 has
 159 occurred, the State Prosecutor shall make a confidential report of the findings and any
 160 recommendations for prosecution to the Attorney General and the district attorney for the
 161 county in which jurisdiction exists to prosecute the matter.

162 (2) A report of the findings and recommendations regarding allegations of offenses
 163 committed by a district attorney need not be made to that district attorney.

164 (b)(1) If the State Prosecutor finds that there has not been a violation of criminal law or
 165 the State Prosecutor does not recommend prosecution, the State Prosecutor shall report
 166 the findings to the person who requested the investigation.

167 (2) If the General Assembly requested the investigation, the report shall be made to the
 168 President of the Senate and the Speaker of the House of Representatives.

169 (3) On request of the person who was the subject of the investigation, the report shall be
 170 made available to the public as soon as possible.

171 45-15-56.

172 (a)(1) The State Prosecutor may prosecute a criminal offense set forth in the State
 173 Prosecutor's report of the findings and recommendations if, within 45 days after receipt
 174 of the report, the district attorney fails to file charges and begin prosecution in accordance
 175 with the recommendations.

176 (2) Notwithstanding paragraph (1) of this subsection, the State Prosecutor may
 177 immediately prosecute a criminal offense that is set forth in the State Prosecutor's report
 178 and that is alleged to have been committed by the district attorney.

179 (b)(1) The State Prosecutor shall represent the state in each appeal and postconviction
 180 proceeding that arises from a prosecution that the State Prosecutor conducts.

181 (2) Notwithstanding paragraph (1) of this subsection, the Attorney General may
 182 represent the state or assist the State Prosecutor:

183 (A) On the request of the State Prosecutor; or

184 (B) As required by law in an appeal or collateral proceeding described in paragraph (1)
 185 of this subsection.

186 45-15-57.

187 (a) The State Prosecutor shall have all the powers and duties of a district attorney,
 188 including the use of a grand jury in any county, when the State Prosecutor:

189 (1) Investigates a case under Code Section 45-15-54; or

190 (2) Prosecutes a case under Code Section 45-15-56.

191 (b)(1) For the limited purpose of furthering an ongoing criminal investigation under
 192 Code Section 45-15-54, the State Prosecutor may issue a subpoena to a person to produce
 193 telephone, business, governmental, or corporate records or documents.

194 (2) The subpoena may be served in the same manner as one issued by a superior court.

195 (c)(1) A person may have an attorney present during any contact with the State
 196 Prosecutor made under subsection (b) of this Code section.

197 (2) The State Prosecutor shall advise a person of the right to counsel when the subpoena
 198 is served.

199 (d)(1)(A) The State Prosecutor immediately may report the failure of a person to obey
 200 a lawfully served subpoena under subsection (b) of this Code section to the superior
 201 court of the county having jurisdiction.

202 (B) The State Prosecutor shall provide a copy of the subpoena and proof of service to
 203 the superior court.

204 (2) After conducting a hearing at which the person who allegedly failed to comply with
 205 a subpoena issued under subsection (b) of this Code section has an opportunity to be
 206 heard and represented by counsel, the court may grant appropriate relief.

207 (e) Nothing in this Code section shall be construed to contravene, deny, or abrogate a
 208 privilege or right recognized by law.

209 45-15-58.

210 The trial of a case that the State Prosecutor prosecutes in accordance with Code
 211 Section 45-15-56 shall take place before the court having jurisdiction in the county in
 212 which the offense was entirely or partly committed, subject to removal in accordance with
 213 law.

214 45-15-59.

215 (a) The budget of the State Prosecutor and the Office of the State Prosecutor shall be a part
 216 of the budget of the office of the Attorney General.

217 (b) The State Prosecutor may appoint and employ such professional, investigative, and
 218 clerical staff as shall be provided for in the state budget.

219 (c) The State Prosecutor and the staff attorneys appointed by the State Prosecutor shall
 220 devote full time to their official duties and shall not engage in the private practice of law.

221 (d)(1) To the extent practicable, the State Prosecutor shall use the services and personnel
 222 of:

223 (A) The office of the Attorney General;

224 (B) The Georgia Bureau of Investigation; and

225 (C) Other state and local law enforcement agencies.

226 (2) The agencies listed in paragraph (1) of this subsection shall cooperate, to the extent
 227 feasible, with the State Prosecutor and the State Prosecutor's staff.

228 45-15-60.

229 (a) The State Prosecutor shall meet and confer regularly with the Attorney General and the
 230 district attorneys of this state.

231 (b) The State Prosecutor shall submit an annual report on activities of the Office of the
 232 State Prosecutor that are not confidential to:

- 233 (1) The Governor;
234 (2) The Attorney General; and
235 (3) The members of the General Assembly."

236 **SECTION 2.**

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