

Senate Bill 92

By: Senators Robertson of the 29th, Kennedy of the 18th, Walker III of the 20th, Cowser of the 46th, Brass of the 28th and others

**AS PASSED SENATE**

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 Qualifications 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 Qualifications

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17 Commission, which shall have the power to discipline, remove, and cause involuntary  
18 retirement of appointed or elected district attorneys or solicitors-general in accordance with  
19 such Paragraph. As used in this Code section, the term 'commission' means the Prosecuting  
20 Attorneys Qualifications 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 subsection  
38 (h) 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 (h) 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) 'Judge' means an elected or appointed public official who presides over a court of  
46 record.

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

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

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

56 (ii) One attorney with at least 5 years of service as an assistant district attorney or an  
57 assistant solicitor-general shall be appointed by the Lieutenant Governor and shall  
58 serve a term of four years; provided, however, that the initial appointment shall be for  
59 two years, and thereafter, successors to such member shall serve terms of four years;

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

67 (iv) One attorney with at least 5 years of service as an assistant district attorney or an  
68 assistant solicitor-general shall be appointed by the Senate Committee on  
69 Assignments and shall serve a term of four years; provided, however, that the initial

70 appointment shall be for three years, and thereafter, successors to such member shall  
71 serve terms of four years.

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

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

75 (A) One elected district attorney or elected solicitor-general shall be appointed by the  
76 Governor for a term of four years and his or her successors shall serve terms of four  
77 years;

78 (B) One elected district attorney or elected solicitor-general shall be elected by vote of  
79 the Senate and shall be presiding officer of the hearing panel and shall serve a term of  
80 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 and has formerly been a  
84 district attorney or a solicitor-general shall be elected by vote of the House of  
85 Representatives and shall serve a term of four years; provided, however, that the initial  
86 appointment shall be for three years, and thereafter, successors to such member shall  
87 serve terms of four years.

88 (5) All members' initial terms shall begin on April 1, 2024; 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 or district attorney, but a vacancy shall be created by operation  
94 of law when he or she no longer has the designation for which he or she was appointed.  
95 Any vacancy for a member shall be filled by the appointing authority, and such appointee  
96 shall serve the balance of the vacating member's unexpired term; provided, however, that,

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

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

104 (f)(1) Each member of the commission shall be entitled to vote on any matter coming  
105 before his or her respective panel unless otherwise provided by rules adopted by the  
106 commission concerning recusal. The chairperson of the investigative panel and the  
107 presiding officer of the hearing panel shall retain a vote on all matters except those in  
108 which such chairperson or presiding officer has been recused. No commission member  
109 present at a panel meeting shall abstain from voting unless he or she is recused. The rules  
110 of the commission shall establish grounds for recusal and the process for allowing a  
111 temporary replacement of a commission member in such circumstance.

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

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

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

121 (4)(A) Members of the commission shall serve without compensation but shall receive  
122 the same daily expense allowance as members of the General Assembly receive, as set  
123 forth in Code Section 28-1-8, for each day such member is in physical attendance at a

124 panel meeting or hearing, plus either reimbursement for actual transportation costs  
125 while traveling by public transportation or the same mileage allowance for use of a  
126 personal motor vehicle in connection with such attendance as members of the General  
127 Assembly receive.

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

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

134 (g) The commission, with the assistance of the Prosecuting Attorneys' Council of the State  
135 of Georgia, shall promulgate standards of conduct and rules for the commission's  
136 governance which will comport with due process and enforce the provisions of subsections  
137 (h) and (i) of this Code section. Such standards and rules shall allow for a full investigation  
138 of a district attorney or solicitor-general only upon majority vote of the investigative panel.  
139 When a commission member receives information relating to the conduct of a district  
140 attorney or solicitor-general, such member shall provide such information to the  
141 commission's director for appropriate action.

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

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

146 (2) Willful misconduct in office;

147 (3) With respect to district attorneys, willful and persistent failure to carry out duties  
148 pursuant to Code Section 15-18-6;

149 (4) With respect to solicitors-general, willful and persistent failure to carry out duties  
150 pursuant to Code Section 15-18-66;

- 151 (5) Conviction of a crime involving moral turpitude;  
152 (6) Conduct prejudicial to the administration of justice which brings the office into  
153 disrepute; or  
154 (7) Knowingly authorizing or permitting an assistant district attorney or assistant  
155 solicitor-general to commit any act constituting grounds for removal under paragraphs (1)  
156 through (6) of this subsection.
- 157 (i)(1) In any complaint filed with the commission alleging a violation of subsection (h)  
158 and requesting an investigation of an elected or appointed district attorney or  
159 solicitor-general, the complainant shall be required to file with the commission a sworn  
160 affidavit detailing the personal knowledge of the facts supporting the complaint,  
161 including any interest the complainant may have in the outcome of the case. The  
162 complainant may attach documents to support the complaint. Nothing in this Code  
163 section shall be construed to limit the ability of the commission to bring a complaint  
164 pursuant to this Code section on its own motion.
- 165 (2) The commission may not entertain a complaint on the basis of a charging decision,  
166 plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar,  
167 or recommendation regarding bond unless the affidavits and any documents attached to  
168 the complaint show it is plausible that the district attorney or solicitor-general made or  
169 knowingly authorized the decision based on:
- 170 (A) Undue bias or prejudice against the accused or in favor of persons with interests  
171 adverse to the accused;  
172 (B) An undisclosed financial interest in the outcome of the prosecution;  
173 (C) An undisclosed conflict of interest;  
174 (D) Factors that are completely unrelated to the duties of prosecution; or  
175 (E) A stated policy, written or otherwise, which demonstrates that the district attorney  
176 or solicitor-general categorically refuses to prosecute any offense or offenses of which  
177 he or she is required by law to prosecute.

178 (3) Upon indictment of a district attorney or solicitor-general of a matter before either  
179 panel, the commission shall suspend its investigation or hearing pending the outcome of  
180 the procedure provided for in Code Section 45-5-6.

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

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

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

190 (B) With respect to a disciplinary matter of a district attorney or solicitor-general, all  
191 pleadings and information shall be subject to disclosure to the public, and all hearings  
192 and proceedings shall be open and available to the public, except to the extent that such  
193 pleadings and information or hearings and proceedings could be properly sealed or  
194 closed under Chapter 14 or Article 4 of Chapter 18 of Title 50 or by a court as provided  
195 by law.

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

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

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



204 (C) Be considered a matter subject to executive session, if the commission were  
205 considered to be an agency under Chapter 14 of Title 50; or  
206 (D) Not be required to be publicly disclosed under Code Section 50-18-72, if the  
207 commission were considered to be an agency under Article 4 of Chapter 18 of Title 50.  
208 (4) The work product of the commission and its staff and the deliberations of the  
209 commission shall remain confidential.  
210 (k) Notwithstanding subsection (j) of this Code section, information regarding a  
211 disciplinary or incapacity matter of a district attorney or solicitor-general may be disclosed  
212 or the confidentiality of such information may be removed when:  
213 (1) The privilege of confidentiality has been waived by the individual who was the  
214 subject of the commission's investigation; or  
215 (2) The commission's rules provide for disclosure:  
216 (A) In the interest of justice and to protect the public;  
217 (B) If an emergency situation exists; or  
218 (C) If a district attorney or solicitor-general is under consideration for another state or  
219 federal position.  
220 (l) Information submitted to the commission or its staff, and testimony given in any  
221 proceeding before the commission or one of its panels, shall be absolutely privileged, and  
222 no civil action predicated upon such information or testimony shall be instituted against  
223 any complainant, witness, or his or her counsel.  
224 (m) A respondent who is subjected to public reprimand, censure, limitation on the  
225 performance of prosecutorial duties, suspension, retirement, or removal shall be entitled  
226 to a copy of the proposed record to be filed with the Supreme Court and, if the respondent  
227 has objections to it, to have the record settled by the hearing panel's presiding officer.  
228 (n) The commission shall commence by October 1, 2023, and the rules and regulations  
229 promulgated by such commission shall be established no later than April 1, 2024. No  
230 complaint shall be filed before July 1, 2024. The commission shall not receive complaint

231 submissions regarding misconduct that occurred prior to July 1, 2023, unless such alleged  
232 misconduct is related to a continuous pattern of conduct that continues beyond that date.  
233 (o) The authority of the commission shall be limited to incapacity or discipline regarding  
234 the conduct of a district attorney or solicitor-general as a holder of such office. Nothing  
235 in this Code section shall be construed as diminishing the authority of the Supreme Court  
236 or the State Bar of Georgia to regulate the practice of law in this state."

237

**SECTION 2.**

238 This Act shall become effective for purposes of appointing members of the commission upon  
239 its approval by the Governor or upon its becoming law without such approval and shall  
240 become effective for all other purposes on July 1, 2023.

241

**SECTION 3.**

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