

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 Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to
2 prosecuting attorneys, so as to provide for duties of district attorneys; to create the
3 Prosecuting Attorneys Qualifications Commission; to provide for definitions; to provide for
4 the powers, composition, appointment, and confirmation of such commission; to provide for
5 commission members' terms, vacancies, and removals; to provide for procedures and
6 confidentiality; to disqualify certain individuals for a certain amount of time from being
7 appointed or elected to the offices of district attorney or solicitor-general; to amend Chapter 4
8 of Title 21 of the Official Code of Georgia Annotated, relating to recall of public officers,
9 so as to revise provisions relating to grounds for recall of district attorneys of judicial circuits
10 and solicitors-general of state courts; to provide for related matters; to provide for an
11 effective date; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting
15 attorneys, is amended by revising Code Section 15-18-6, relating to duties of district
16 attorney, as follows:

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17 "15-18-6.

18 The duties of the district attorneys within their respective circuits are:

19 (1) To attend each session of the superior courts unless excused by the judge thereof and
20 to remain until the business of the state is disposed of;

21 (2) To attend on the grand juries, advise them in relation to matters of law, and swear and
22 examine witnesses before them;

23 (3) To administer the oaths the laws require to the grand and trial jurors and to the
24 bailiffs or other officers of the court and otherwise to aid the presiding judge in
25 organizing the courts as he may require;

26 (4) To review every individual case for which probable cause for prosecution exists, and
27 make a prosecutorial decision available under the law based on the facts and
28 circumstances of each individual case under oath of duty as provided in Code Section
29 15-18-2;

30 ~~(4)~~(5) To draw up all indictments or presentments, when requested by the grand jury, and
31 to prosecute all indictable offenses;

32 ~~(5)~~(6) To prosecute civil actions to enforce any civil penalty set forth in Code Section
33 40-6-163 and to prosecute or defend any other civil action in the prosecution or defense
34 of which the state is interested, unless otherwise specially provided for;

35 ~~(6)~~(7) To attend before the appellate courts when any criminal case emanating from their
36 respective circuits is tried, to argue the same, and to perform any other duty therein which
37 the interest of the state may require;

38 ~~(7)~~(8) To advise law enforcement officers concerning the sufficiency of evidence,
39 warrants, and similar matters relating to the investigation and prosecution of criminal
40 offenses;

41 ~~(8)~~(9) To collect all money due the state in the hands of any escheators and to pay it over
42 to the educational fund, if necessary, compelling payment by rule or order of court or
43 other legal means;

44 ~~(9)~~(10) To collect all claims of the state which they may be ordered to collect by the state
 45 revenue commissioner and to remit the same within 30 days after collection; and on
 46 October 1 of every year to report to the state revenue commissioner the condition of the
 47 claims in their hands in favor of the state, particularly specifying:

48 (A) The amounts collected and paid, from what sources received and for what
 49 purposes, and to whom paid;

50 (B) What claims are unpaid and why;

51 (C) What judgments have been obtained, when, and in what court; and

52 (D) What actions are instituted, in what courts, and their present progress and future
 53 prospects;

54 ~~(10)~~(11) To ensure disposition information is submitted in accordance with subsection
 55 (g) of Code Section 35-3-36 when a final disposition decision is made by a district
 56 attorney;

57 ~~(11)~~(12) To assist victims and witnesses of crimes through the complexities of the
 58 criminal justice system and ensure that the victims of crimes are apprised of the rights
 59 afforded them under the law; and

60 ~~(12)~~(13) To perform such other duties as are or may be required by law or which
 61 necessarily appertain to their office."

62 **SECTION 2.**

63 Said chapter is further amended by adding a new Code section to Article 1, relating to
 64 general provisions relative to prosecuting attorneys, to read as follows:

65 "15-18-32.

66 (a) Pursuant to Article VI, Section VIII, Paragraph II of the Constitution of Georgia in
 67 reference to district attorneys and Article 3 of this chapter in reference to solicitors-general
 68 of state courts, there is hereby created the Prosecuting Attorneys Qualifications
 69 Commission, which shall have the power to discipline, remove, and cause involuntary

70 retirement of appointed or elected district attorneys or solicitors-general in accordance with
71 such Paragraph. As used in this Code section, the term 'commission' means the Prosecuting
72 Attorneys Qualifications Commission.

73 (b) The commission shall consist of eight members.

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

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

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

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

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

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

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

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

87 (B) Issuing disciplinary and incapacity orders;

88 (C) Issuing formal advisory opinions on its own initiative or on the recommendation
89 of the investigative panel regarding the grounds for discipline set forth under subsection
90 (h) of this Code section; and

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

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

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

97 (B) 'Judge' means an elected or appointed public official who presides over a court of
98 record.

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

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

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

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

112 (iii) Two practicing attorneys shall be appointed by the Speaker of the House of
113 Representatives and each shall serve terms of four years; provided, however, that the
114 initial appointment of one attorney member as designated by the Speaker of the House
115 of Representatives shall be for four years and the initial appointment of the other
116 attorney member as designated by the Speaker of the House of Representatives shall
117 be for one year, and thereafter, successors to such members shall serve terms of four
118 years; and

119 (iv) One attorney with at least five years of service as an assistant district attorney or
120 an assistant solicitor-general shall be appointed by the Senate Committee on
121 Assignments and shall serve a term of four years; provided, however, that the initial
122 appointment shall be for three years, and thereafter, successors to such member shall
123 serve terms of four years.

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

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

127 (A) One elected district attorney or elected solicitor-general shall be appointed by the
128 Governor for a term of four years and his or her successors shall serve terms of four
129 years; provided, however, that the initial appointment shall be for three years, and
130 thereafter, successors to such member shall serve terms of four years;

131 (B) One elected district attorney or elected solicitor-general shall be appointed by of
132 the Senate Committee on Assignments and shall be the presiding officer of the hearing
133 panel and shall serve a term of four years; provided, however, that the initial
134 appointment shall be for one year, and thereafter, successors to such member shall serve
135 terms of four years; and

136 (C) One former judge of the superior court or Court of Appeals or former Justice who
137 shall have at least ten years of service as a judge or Justice and has formerly been a
138 district attorney or a solicitor-general shall be appointed by the Speaker of the House
139 of Representatives and shall serve a term of four years; provided, however, that the
140 initial appointment shall be for three years, and thereafter, successors to such member
141 shall serve terms of four years.

142 (5) All members shall be appointed by and their initial terms shall begin on July 1, 2023;
143 provided, however, that the initial term of a member under this paragraph shall not be
144 construed as counting toward the limit of two full terms of service as provided for under
145 paragraph (6) of this subsection.

146 (6) A commission member shall be eligible to serve so long as he or she retains his or
147 her status as an attorney, citizen, or district attorney, but a vacancy shall be created by
148 operation of law when he or she no longer has the designation for which he or she was
149 appointed. Any vacancy for a member shall be filled by the appointing authority, and
150 such appointee shall serve the balance of the vacating member's unexpired term;

151 provided, however, that, if the appointing authority fails to fill a vacancy within 60 days
152 of being notified of such vacancy by the commission, the Governor shall appoint a
153 replacement member from the same category of member. Any member of the
154 commission shall serve no more than two full terms.

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

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

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

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

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

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

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

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

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

188 (g) The commission, with the assistance of the Prosecuting Attorneys' Council of the State
189 of Georgia, shall promulgate standards of conduct and rules for the commission's
190 governance which will comport with due process and enforce the provisions of subsections
191 (h) and (i) of this Code section; provided, however, that such standards and rules shall be
192 effective only upon review and adoption by the Supreme Court. Such standards and rules
193 shall allow for a full investigation of a district attorney or solicitor-general only upon
194 majority vote of the investigative panel. When a commission member receives information
195 relating to the conduct of a district attorney or solicitor-general, such member shall provide
196 such information to the commission's director for appropriate action.

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

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

201 (2) Willful misconduct in office;

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

- 204 (4) With respect to solicitors-general, willful and persistent failure to carry out duties
205 pursuant to Code Section 15-18-66;
- 206 (5) Conviction of a crime involving moral turpitude;
- 207 (6) Conduct prejudicial to the administration of justice which brings the office into
208 disrepute; or
- 209 (7) Knowingly authorizing or permitting an assistant district attorney or assistant
210 solicitor-general to commit any act constituting grounds for removal under paragraphs (1)
211 through (6) of this subsection.
- 212 (i)(1) In any complaint filed with the commission alleging a violation of subsection (h)
213 and requesting an investigation of an elected or appointed district attorney or
214 solicitor-general, the complainant shall be required to file with the commission a sworn
215 affidavit detailing the personal knowledge of the facts supporting the complaint,
216 including any interest the complainant may have in the outcome of the case. The
217 complainant may attach documents to support the complaint. Nothing in this Code
218 section shall be construed to limit the ability of the commission to bring a complaint
219 pursuant to this Code section on its own motion.
- 220 (2) The commission may not entertain a complaint on the basis of a charging decision,
221 plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar,
222 or recommendation regarding bond unless the affidavits and any documents attached to
223 the complaint show it is plausible that the district attorney or solicitor-general made or
224 knowingly authorized the decision based on:
- 225 (A) Undue bias or prejudice against the accused or in favor of persons with interests
226 adverse to the accused;
- 227 (B) An undisclosed financial interest in the outcome of the prosecution;
- 228 (C) An undisclosed conflict of interest;
- 229 (D) Factors that are completely unrelated to the duties of prosecution; or

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

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

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

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

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

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

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

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

257 (B) Disclose incapacity matters of a district attorney or solicitor-general protected in
258 paragraph (1) or subparagraph (A) of paragraph (2) of this subsection;
259 (C) Be considered a matter subject to executive session, if the commission were
260 considered to be an agency under Chapter 14 of Title 50; or
261 (D) Not be required to be publicly disclosed under Code Section 50-18-72, if the
262 commission were considered to be an agency under Article 4 of Chapter 18 of Title 50.
263 (4) The work product of the commission and its staff and the deliberations of the
264 commission shall remain confidential.
265 (k) Notwithstanding subsection (j) of this Code section, information regarding a
266 disciplinary or incapacity matter of a district attorney or solicitor-general may be disclosed
267 or the confidentiality of such information may be removed when:
268 (1) The privilege of confidentiality has been waived by the individual who was the
269 subject of the commission's investigation; or
270 (2) The commission's rules provide for disclosure:
271 (A) In the interest of justice and to protect the public;
272 (B) If an emergency situation exists; or
273 (C) If a district attorney or solicitor-general is under consideration for another state or
274 federal position.
275 (l) Information submitted to the commission or its staff, and testimony given in any
276 proceeding before the commission or one of its panels, shall be absolutely privileged, and
277 no civil action predicated upon such information or testimony shall be instituted against
278 any complainant, witness, or his or her counsel.
279 (m) A respondent may appeal the decision of the hearing panel by submitting a petition
280 to the superior court of the county where such respondent served as a district attorney or
281 solicitor-general. A respondent who is subjected to public reprimand, censure, limitation
282 on the performance of prosecutorial duties, suspension, retirement, or removal shall be
283 entitled to a copy of the proposed record to be filed with the Supreme Court and, if the

284 respondent has objections to it, to have the record settled by the hearing panel's presiding
285 officer. The hearing panel's order in a disciplinary or incapacity matter may be appealed
286 to the Superior Court of Fulton County pursuant to Chapter 3 of Title 5.

287 (n) The commission shall commence by July 1, 2023, and the rules and regulations
288 promulgated by such commission shall be established no later than October 1, 2023. No
289 complaint shall be filed before October 1, 2023. The commission shall not receive
290 complaint submissions regarding misconduct in office that occurred prior to the effective
291 date of this Code section, unless such alleged misconduct is related to a continuous pattern
292 of conduct that continues beyond that date.

293 (o) The authority of the commission shall be limited to incapacity or discipline regarding
294 the conduct of a district attorney or solicitor-general as a holder of such office. Nothing
295 in this Code section shall be construed as diminishing the authority of the Supreme Court
296 or the State Bar of Georgia to regulate the practice of law in this state.

297 (p) In the event that a district attorney or solicitor-general is removed or involuntarily
298 retired pursuant to this Code section, such individual shall be disqualified from being
299 appointed or elected to the office of district attorney of any judicial circuit or to the office
300 of solicitor-general of any county of this state for a period of ten years from the date of
301 such removal or involuntary retirement."

302 **SECTION 3.**

303 Said chapter is further amended by revising paragraph (1) of subsection (b) of Code Section
304 15-18-66, relating to duties and authority regarding solicitors-general, as follows:

305 "(1) To review every individual case for which probable cause for prosecution exists, and
306 make a prosecutorial decision available under the law based on the facts and
307 circumstances of each individual case under oath of duty as provided in Code Section
308 15-18-2, and, if necessary, investigate all criminal cases which may be prosecuted in state
309 court;"

310

SECTION 4.

311 Chapter 4 of Title 21 of the Official Code of Georgia Annotated, relating to recall of public
312 officers, is amended by revising paragraph (7) of Code Section 21-4-3, relating to definitions,
313 as follows:

314 "(7) 'Grounds for recall' means:

315 (A) That the official has, while holding public office, conducted himself or herself in
316 a manner which relates to and adversely affects the administration of his or her office
317 and adversely affects the rights and interests of the public; and

318 (B) That the official:

319 (i) Has committed an act or acts of malfeasance while in office;

320 (ii) Has violated his or her oath of office;

321 (iii) Has committed an act of misconduct in office;

322 (iv) Is guilty of a failure to perform duties prescribed by law; or

323 (v) Has willfully misused, converted, or misappropriated, without authority, public
324 property or public funds entrusted to or associated with the elective office to which
325 the official has been elected or appointed.

326 Discretionary performance of a lawful act or a prescribed duty shall not constitute a
327 ground for recall of an elected public official; provided, however, that a judicial circuit
328 district attorney's failure to perform the duties provided for in Code Section 15-18-6 or
329 a state court solicitor-general's failure to perform the duties provided for in Code Section
330 15-18-66 shall constitute grounds for a recall of such elected official."

331

SECTION 5.

332 This Act shall become effective upon its approval by the Governor or upon its becoming law
333 without such approval.

334

SECTION 6.

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