

House Bill 411

By: Representatives Gullett of the 19th, England of the 116th, Burns of the 159th, Gravley of the 67th, Burchett of the 176th, and others

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 Oversight Commission; to provide for definitions; to provide for the powers,
4 composition, appointment, and confirmation of such commission; to provide for commission
5 members' terms, vacancies, and removals; to provide for procedures and confidentiality; to
6 provide for related matters; to provide for effective dates; to repeal conflicting laws; and for
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to
11 general provisions regarding prosecuting attorneys, is amended by adding a new Code
12 section to read as follows:

13 "15-18-32.

14 (a) Pursuant to Article VI, Section VIII, Paragraph II of the Constitution of Georgia, there
15 is hereby created the Prosecuting Attorneys Oversight Commission, which shall have the
16 power to discipline, remove, and cause involuntary retirement of appointed or elected

district attorneys or solicitor-generals in accordance with such Paragraph. As used in this Code section, the term 'commission' means the Prosecuting Attorneys Oversight Commission.

(b) The commission shall consist of eight members.

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

(2) The investigative panel shall be responsible for:

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

(B) Investigation of violations of rules of the commission as set forth in subsection (h) of this Code section;

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

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

(3) The hearing panel shall be responsible for:

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

(B) Making recommendations to the Supreme Court as to disciplinary and incapacity orders; and

(C) Issuing formal advisory opinions on its own initiative or on the recommendation of the investigative panel, subject to review by the Supreme Court, regarding the Georgia Rules of Professional Conduct as it applies to district attorneys and solicitor-generals.

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

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

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

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

(D) 'Senior judge' means a judge holding the office of senior judge of the superior courts as provided for under Code Section 15-1-9.2.

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

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

(i) One district attorney shall be appointed by the Governor;

(ii) One solicitor-general shall be appointed by the Lieutenant Governor;

(iii) Two practicing attorneys with at least five years of experience as a prosecutor, but who is not currently a prosecutor, shall be appointed by the Speaker of the House of Representatives; and

(iv) One practicing attorney with at least five years of experience as a prosecutor, but who is not currently a prosecutor, shall be appointed by the Senate Committee on Assignments.

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

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

(A) One citizen member shall be appointed by the Governor;

(B) One district attorney shall be elected by vote of the Senate and shall be presiding officer of the hearing panel; and

(C) One senior judge shall be elected by vote of the House of Representatives.

(5) All members' initial terms shall begin on April 1, 2022, and their successors' terms shall begin on July 1, 2022; provided, however, that the initial term of a member under this paragraph shall not be construed as counting towards the limit of two full terms of service as provided for under paragraph (6) of this subsection.

(6) A commission member shall be eligible to serve so long as he or she retains his or her status as an attorney, citizen, or district attorney, but a vacancy shall be created by operation of law when he or she no longer has the designation for which he or she was appointed. Any vacancy for a member shall be filled by the appointing authority, and such appointee shall serve the balance of the vacating member's unexpired term; provided, however, that, if the appointing authority fails to fill a vacancy within 60 days of being notified of such vacancy by the commission, the Governor shall appoint a replacement member from the same category of member. Any member of the commission shall serve no more than two full terms.

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

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

(2)(A) As used in this paragraph, the term 'for cause' shall include indictment for or conviction of a felony or any offense involving moral turpitude; misconduct, malpractice, malfeasance, misfeasance, nonfeasance, or incapacity; failure to attend

three or more panel meetings or hearings in a one-year period without good and sufficient reason; or abstaining from voting, unless recused.

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

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

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

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

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

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

solicitor-general, such member shall provide such information to the commission's director for appropriate action.

(h) The district attorney or solicitor-general will:

(1) Uphold the laws of the State of Georgia;

(2) Avoid making extraneous judicial statements regarding pending litigation matters within their jurisdiction; and

(3) Avoid conduct that causes disrepute to the office of the district attorney or the office of the solicitor-general.

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

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

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

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

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

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

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

(C) Be considered a matter subject to executive session, if the commission were considered to be an agency under Chapter 14 of Title 50; or

(D) Not be required to be publicly disclosed under Code Section 50-18-72, if the commission were considered to be an agency under Article 4 of Chapter 18 of Title 50.

(4) The work product of the commission and its staff and the deliberations of the commission shall remain confidential.

(j) Notwithstanding subsection (i) of this Code section, information regarding a disciplinary or incapacity matter of a district attorney or solicitor-general may be disclosed or the confidentiality of such information may be removed when:

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

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

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

(B) If an emergency situation exists; or

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

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

(l) A respondent who is recommended for public reprimand, censure, limitation on the performance of prosecutorial duties, suspension, retirement, or removal shall be entitled to a copy of the proposed record to be filed with the Supreme Court and, if the respondent

177 has objections to it, to have the record settled by the hearing panel's presiding officer. The
178 hearing panel's recommendation as to an order in a disciplinary or incapacity matter shall
179 be reviewed by the Supreme Court in accordance with its rules and the rules of the
180 commission.

181 (m) When a district attorney or solicitor-general knows that he or she is under
182 investigation by the commission and a commission member is representing a party in any
183 case which the district attorney or solicitor-general is prosecuting, the district attorney or
184 solicitor-general and his or her office shall be disqualified from handling such matter.

185 (n) The commission shall commence by April 1, 2022, and the rules and regulations
186 promulgated by such commission shall be established no later than July 1, 2022."

187 **SECTION 2.**

188 This Act shall become effective for purposes of appointing members of the commission upon
189 its approval by the Governor or upon its becoming law without such approval and shall
190 become effective for all other purposes on July 1, 2021.

191 **SECTION 3.**

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