

The House Committee on Rules offers the following substitute to SB 218:

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 amend Chapter 5 of Title 45 of the Official Code of Georgia Annotated, relating to vacation
7 of office, so as to provide for the suspension of compensation for certain public officers who
8 are suspended because of indictment for a felony; to provide for related matters; to provide
9 for effective dates; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

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

S. B. 218 (SUB)

- 1 -

15 "15-18-32.

16 (a) Pursuant to Article VI, Section VIII, Paragraph II of the Constitution of Georgia in
17 reference to district attorneys and Article 3 of this chapter in reference to solicitors-general
18 of state courts, there is hereby created the Prosecuting Attorneys Oversight Commission,
19 which shall have the power to discipline, remove, and cause involuntary retirement of
20 appointed or elected district attorneys or solicitors-general in accordance with such
21 Paragraph. As used in this Code section, the term 'commission' means the Prosecuting
22 Attorneys Oversight Commission.

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

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

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

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

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

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

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

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

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

37 (B) Issuing disciplinary and incapacity orders;

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

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

(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.

(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 attorney with prosecutorial experience shall be appointed by the Governor and shall serve a term of four years; provided, however, that the initial appointment shall be for three years, and thereafter, successors to such member shall serve terms of four years;

(ii) One attorney with prosecutorial experience shall be appointed by the Lieutenant Governor and shall serve a term of four years; provided, however, that the initial appointment shall be for two years, and thereafter, successors to such member shall serve terms of four years;

(iii) Two practicing attorneys shall be appointed by the Speaker of the House of Representatives and each shall serve terms of four years; provided, however, that the initial appointment of one attorney member as designated by the Speaker of the House of Representatives shall be for four years and the initial appointment of the other

attorney member as designated by the Speaker of the House of Representatives shall be for one year, and thereafter, successors to such members shall serve terms of four years; and

(iv) One attorney with prosecutorial experience shall be appointed by the Senate Committee on Assignments and shall serve a term of four years; provided, however, that the initial appointment shall be for three years, and thereafter, successors to such member shall serve terms of four years.

(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 for a term of four years and his or her successors shall serve terms of four years;

(B) One district attorney shall be elected by vote of the Senate and shall be presiding officer of the hearing panel and shall serve a term of four years; provided, however, that the initial appointment shall be for one year, and thereafter, successors to such member shall serve terms of four years; and

(C) One former judge of the superior court or Court of Appeals or former Justice who shall have at least ten years of service as a judge or Justice shall be elected by vote of the House of Representatives and shall serve a term of four years; provided, however, that the initial appointment shall be for three years, and thereafter, successors to such member shall serve terms of four years.

(5) All members' initial terms shall begin on April 1, 2022; provided, however, that the initial term of a member under this paragraph shall not be construed as counting toward 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 a 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 standards of conduct and rules for the commission's governance which will comport with due process and enforce the provisions of subsections (h) and (i) of this Code section; provided, however, that such standards and rules shall be effective only upon review and adoption by the Supreme Court. Such standards and 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 following shall be grounds for discipline of a district attorney or solicitor-general or for his or her removal or involuntary retirement from office:

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

(2) Willful misconduct in office;

149 (3) Willful and persistent failure to perform his or her duties;

150 (4) Conviction of a crime involving moral turpitude;

151 (5) Conduct prejudicial to the administration of justice which brings the office into
152 disrepute;

153 (6) Knowingly authorizing or permitting an assistant district attorney or assistant
154 solicitor-general to commit any act constituting grounds for removal under paragraphs (1)
155 through (5) of this subsection; or

156 (7) Violation of the Georgia Rules of Professional Conduct of the State Bar of Georgia,
157 including, but not limited to, Rule 3.8 of the Georgia Rules of Professional Conduct of
158 the State Bar of Georgia regarding special responsibilities of a prosecutor.

159 (i)(1) In any complaint filed with the commission alleging a violation of subsection (h)
160 and requesting an investigation of an elected or appointed district attorney or
161 solicitor-general, the complainant shall be required to file with the commission a sworn
162 affidavit detailing the personal knowledge of the facts supporting the complaint,
163 including any interest the complainant may have in the outcome of the case. The
164 complainant may attach documents to support the complaint. Nothing in this Code
165 section shall be construed to limit the ability of the commission to bring a complaint
166 pursuant to this Code section on its own motion.

167 (2) The commission may not entertain a complaint on the basis of a charging decision,
168 plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar,
169 or recommendation regarding bond unless the affidavits and any documents attached to
170 the complaint show it is plausible that the district attorney or solicitor-general made or
171 knowingly authorized the decision based on:

172 (A) Undue bias or prejudice against the accused or in favor of persons with interests
173 adverse to the accused;

174 (B) A lack of probable cause;

175 (C) An undisclosed financial interest in the outcome of the prosecution;

(D) An undisclosed conflict of interest;

(E) Factors that are completely unrelated to the duties of prosecution; or

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

(j)(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.

(k) Notwithstanding subsection (j) 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.

(l) 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.

(m) A respondent who is subjected to 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 has objections to it, to have the record settled by the hearing panel's presiding officer. The

228 hearing panel's order in a disciplinary or incapacity matter may be reviewed by the
229 Supreme Court in accordance with its rules and the rules of the commission.

230 (n) The commission shall commence by April 1, 2022, and the rules and regulations
231 promulgated by such commission shall be established no later than April 1, 2023. No
232 complaint shall be filed before July 1, 2023.

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 Chapter 5 of Title 45 of the Official Code of Georgia Annotated, relating to vacation of
239 office, is amended by revising Code Section 45-5-6, relating to public official investigated
240 by special commission upon indictment, gubernatorial review if commission recommends
241 suspension, suspension, reinstatement, and replacement or temporary officer, as follows:

242 "45-5-6.

243 (a) As used in this Code section, the term 'public official' means any elected county
244 officer; any elected member of a county governing authority; any elected member of a
245 city-county consolidated government; any member of a county, area, or independent board
246 of education; any school superintendent of a county, area, or independent school system;
247 any solicitor-general of a state court; any elected member of any municipal governing
248 authority; any member of the Public Service Commission; and any district attorney.

249 (b) Upon indictment for a felony by a grand jury of this state or by the United States,
250 which felony indictment relates to the performance or activities of the office of any public
251 official, the Attorney General or district attorney shall transmit a certified copy of the
252 indictment to the Governor who shall, subject to subsection (e) of this Code section,
253 appoint a review commission. Except as provided in this subsection, the commission shall

be composed of the Attorney General and two public officials who hold the same office as the individual indicted. The members of the commission shall receive no compensation for their services but shall be reimbursed for any expenses incurred in connection with the investigation. The funds necessary to conduct the investigation shall come from funds appropriated to the executive branch of government. If the Attorney General brings the indictment against the public official, the Attorney General shall not serve on the commission. In place of the Attorney General, the Governor shall appoint a retired Supreme Court Justice or a retired Court of Appeals Judge.

(c) Unless a longer period of time is granted by the Governor, the commission shall make a written report to the Governor within 14 days. If the commission determines that the indictment relates to and adversely affects the administration of the office of the indicted public official and that the rights and interests of the public are adversely affected thereby, the commission shall recommend that the public official be suspended from office. If, and only if, the commission recommends suspension, then the Governor shall review the findings and recommendations of the commission and may suspend the public officer from office immediately and without further action pending the final disposition of the case or until the expiration of his or her term of office, whichever occurs first. During the term of office to which such officer was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the public official shall be immediately reinstated to the office from which he or she was suspended. While a public official is suspended under this Code section ~~and until initial conviction by the trial court, the public official shall continue to receive the compensation from his office. After initial conviction by the trial court, the public official shall not be~~ entitled to receive the compensation from his or her office. If the public official is reinstated to office, he or she shall be entitled to receive any compensation withheld under the provisions of this Code section.

(d)(1) For the duration of any suspension of any elected member of any municipal or consolidated city-county governing authority under this Code section, a replacement officer for the public officer suspended shall be appointed as provided for in any general law, local law, ordinance, or resolution governing the filling of a temporary vacancy in the public office affected. For the duration of any suspension of any other public official under this Code section, a replacement officer for the public official shall be appointed as provided for in any applicable general or local law governing the filling of a temporary vacancy in the public office affected. If no such general law, local law, ordinance, or resolution governing the filling of a temporary vacancy is applicable, then the Governor shall appoint a replacement officer for the public official suspended.

(2) Upon the final conviction, the office of the public official shall be vacated immediately without further action. Said vacancy shall be filled in the manner provided by law for filling vacancies in such office.

(e) No commission shall be appointed for a period of 14 days from the day the Governor receives the indictment. This period may be extended by the Governor. During this period of time, the indicted public official may, in writing, authorize the Governor to suspend him or her from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement, or declaration of vacancy as are provided in this Code section for nonvoluntary suspensions.

(f) After any suspension under this Code section, the suspended public official may petition the Governor for a review. The Governor may reappoint the commission to review the suspension. The commission shall make a written report in 14 days. If the commission recommends that the public official be reinstated, ~~he~~ such public official shall immediately be reinstated to office.

(g) The report and records of the commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose. The report and records of the commission shall not be open to the public.

(h) The provisions of this Code section shall not apply to any indictment handed down prior to January 1, 1985.

(i) If a public official who is suspended from office under the provisions of this Code section is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the public official shall be reinstated to office. The public official shall not be reinstated under this subsection if he or she is not so tried based on a continuance granted upon a motion made only by the defendant.

(j) Unless otherwise provided by local law, in the event the Governor appoints a member of a governing authority as a temporary replacement for a suspended public official under paragraph (1) of subsection (d) of this Code section, the governing authority, by majority vote, shall select a temporary replacement who is qualified by law to serve as such member of the governing authority, to fill such member's seat on the governing authority until such time as the suspension of the public official is terminated or the end of such member's current term on the governing authority, whichever is earlier. Before selecting such temporary replacement, the governing authority shall advertise its intention to select such temporary replacement in the applicable legal organ at least once a week for two weeks and on the governing authority's website, if it has one, and shall solicit applicants for such temporary replacement position."

SECTION 3.

(a) This section and Section 1 of this Act shall become effective for purposes of appointing members of the commission upon its approval by the Governor or upon its becoming law without such approval. Section 1 of this Act shall become effective for all other purposes on July 1, 2021.

(b) The remaining portions of this Act shall become effective on July 1, 2021.

332

SECTION 4.

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