

COMMITTEES OF CONFERENCE SUBSTITUTE TO SB 218

WITHDRAWN

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 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections
7 and primaries generally, so as to authorize the General Assembly to provide by local
8 legislation for nonpartisan elections for district attorneys of a judicial circuit and
9 solicitors-general of a state court; to provide procedures for such nonpartisan general
10 elections; to provide for cross-references; to provide for related matters; to provide for
11 effective dates; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

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

17 "15-18-32.

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

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

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

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

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

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

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

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

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

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

39 (B) Issuing disciplinary and incapacity orders;

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

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

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

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

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

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

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

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

58 (i) One attorney with prosecutorial experience as an elected district attorney shall be
59 appointed by the Governor and shall serve a term of four years; provided, however,
60 that the initial appointment shall be for three years, and thereafter, successors to such
61 member shall serve terms of four years;

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

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

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

73 (iv) One former district attorney or former solicitor general shall be appointed by the
74 Senate Committee on Assignments and shall serve a term of four years; provided,
75 however, that the initial appointment shall be for three years, and thereafter,
76 successors to such member shall serve terms of four years.

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

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

80 (A) One citizen member shall be appointed by the Governor for a term of four years
81 and his or her successors shall serve terms of four years;

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

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

91 (5) All members shall be appointed by December 1, 2022, and their initial terms shall
92 begin on April 1, 2023; provided, however, that the initial term of a member under this
93 paragraph shall not be construed as counting toward the limit of two full terms of service
94 as provided for under paragraph (6) of this subsection.

95 (6) A commission member shall be eligible to serve so long as he or she retains his or
96 her status as an attorney, citizen, or district attorney, but a vacancy shall be created by

97 operation of law when he or she no longer has the designation for which he or she was
98 appointed. Any vacancy for a member shall be filled by the appointing authority, and
99 such appointee shall serve the balance of the vacating member's unexpired term;
100 provided, however, that, if the appointing authority fails to fill a vacancy within 60 days
101 of being notified of such vacancy by the commission, the Governor shall appoint a
102 replacement member from the same category of member. Any member of the
103 commission shall serve no more than two full terms.

104 (e)(1) The names of the appointees by the Governor pursuant to this Code section shall
105 be submitted by the Governor to the Senate no later than December 31, 2022. Any
106 member appointed by the Governor to the commission shall serve until the Senate
107 confirms such appointee, and if an individual's name is not submitted by such deadline,
108 he or she shall not be eligible for confirmation.

109 (2) If an appointee of the Governor is not confirmed by the Senate, the Governor shall
110 promptly submit another appointee's name, notwithstanding the deadline expressed in
111 paragraph (1) of this subsection.

112 (3) If the Senate is not in session at the time a Governor's appointee's term begins or a
113 vacancy is created, an appointee for such term or to fill such vacancy shall be effective
114 until his or her name can be submitted to the Senate and his or her appointment can be
115 confirmed at the next regular session.

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

119 (g)(1) Each member of the commission shall be entitled to vote on any matter coming
120 before his or her respective panel unless otherwise provided by rules adopted by the
121 commission concerning recusal. The chairperson of the investigative panel and the
122 presiding officer of the hearing panel shall retain a vote on all matters except those in
123 which such chairperson or presiding officer has been recused. No commission member

124 present at a panel meeting shall abstain from voting unless he or she is recused. The rules
125 of the commission shall establish grounds for recusal and the process for allowing a
126 temporary replacement of a commission member in such circumstance.

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

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

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

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

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

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

149 (h) The commission, with the assistance of the Prosecuting Attorneys' Council of the State
150 of Georgia, shall promulgate standards of conduct and rules for the commission's

151 governance which will comport with due process and enforce the provisions of subsections
152 (i) and (j) of this Code section; provided, however, that such standards and rules shall be
153 effective only upon review and adoption by the Supreme Court. Such standards and rules
154 shall allow for a full investigation of a district attorney or solicitor-general only upon
155 majority vote of the investigative panel. When a commission member receives information
156 relating to the conduct of a district attorney or solicitor-general, such member shall provide
157 such information to the commission's director for appropriate action. Any standards of
158 conduct adopted shall be in aid of the judiciary in the performance of its functions and shall
159 function jointly with the Georgia Rules of Professional Conduct of the State Bar of
160 Georgia. The standards of conduct shall include a list of actions that will be grounds for
161 discipline of a district attorney or solicitor-general or for his or her removal or involuntary
162 retirement from office.

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

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

167 (2) Willful misconduct in office;

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

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

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

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

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

178 (j)(1) In any complaint filed with the commission alleging a violation of subsection (h)
179 and requesting an investigation of an elected or appointed district attorney or
180 solicitor-general, the complainant shall be required to file with the commission a sworn
181 affidavit detailing the personal knowledge of the facts supporting the complaint,
182 including any interest the complainant may have in the outcome of the case. The
183 complainant may attach documents to support the complaint. Nothing in this Code
184 section shall be construed to limit the ability of the commission to bring a complaint
185 pursuant to this Code section on its own motion.

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

191 (A) Undue bias;

192 (B) A lack of probable cause;

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

194 (D) An undisclosed conflict of interest;

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

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

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

- 205 (2) After the filing and service of formal charges:
- 206 (A) With respect to an incapacity matter of a district attorney or solicitor-general, all
207 pleadings, information, hearings, and proceedings shall remain confidential; and
- 208 (B) With respect to a disciplinary matter of a district attorney or solicitor-general, all
209 pleadings and information shall be subject to disclosure to the public, and all hearings
210 and proceedings shall be open and available to the public, except to the extent that such
211 pleadings and information or hearings and proceedings could be properly sealed or
212 closed under Chapter 14 or Article 4 of Chapter 18 of Title 50 or by a court as provided
213 by law.
- 214 (3) With respect to administrative and other matters, all records and information shall be
215 subject to disclosure to the public, and all meetings, or portions thereof, shall be open and
216 available to the public, except to the extent that such records, information, and meetings
217 would:
- 218 (A) Disclose disciplinary matters of a district attorney or solicitor-general protected in
219 paragraph (1) of this subsection;
- 220 (B) Disclose incapacity matters of a district attorney or solicitor-general protected in
221 paragraph (1) or subparagraph (A) of paragraph (2) of this subsection;
- 222 (C) Be considered a matter subject to executive session, if the commission were
223 considered to be an agency under Chapter 14 of Title 50; or
- 224 (D) Not be required to be publicly disclosed under Code Section 50-18-72, if the
225 commission were considered to be an agency under Article 4 of Chapter 18 of Title 50.
- 226 (4) The work product of the commission and its staff and the deliberations of the
227 commission shall remain confidential.
- 228 (l) Notwithstanding subsection (k) of this Code section, information regarding a
229 disciplinary or incapacity matter of a district attorney or solicitor-general may be disclosed
230 or the confidentiality of such information may be removed when:

- 231 (1) The privilege of confidentiality has been waived by the individual who was the
232 subject of the commission's investigation; or
- 233 (2) The commission's rules provide for disclosure:
- 234 (A) In the interest of justice and to protect the public;
235 (B) If an emergency situation exists; or
236 (C) If a district attorney or solicitor-general is under consideration for another state or
237 federal position.
- 238 (m) Information submitted to the commission or its staff, and testimony given in any
239 proceeding before the commission or one of its panels, shall be absolutely privileged, and
240 no civil action predicated upon such information or testimony shall be instituted against
241 any complainant, witness, or his or her counsel.
- 242 (n) A respondent who is subjected to public reprimand, censure, limitation on the
243 performance of prosecutorial duties, suspension, retirement, or removal shall be entitled
244 to a copy of the proposed record to be filed with the Supreme Court and, if the respondent
245 has objections to it, to have the record settled by the hearing panel's presiding officer. The
246 hearing panel's order in a disciplinary or incapacity matter shall be reviewed by the
247 Supreme Court in accordance with its rules and the rules of the commission.
- 248 (o) The commission shall commence by April 1, 2023, and the rules and regulations
249 promulgated by such commission shall be established no later than October 1, 2023. No
250 complaint shall be filed before January 1, 2024.
- 251 (p) The authority of the commission shall be limited to incapacity or discipline regarding
252 the conduct of a district attorney or solicitor-general as a holder of such office. Nothing
253 in this Code section shall be construed as diminishing the authority of the Supreme Court
254 or the State Bar of Georgia to regulate the practice of law in this state."

SECTION 2.

255

256 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and
257 primaries generally, is amended by revising Code Section 21-2-9, relating to date of election
258 for offices, as follows:

259 "21-2-9.

260 (a) The Governor, Lieutenant Governor, Secretary of State, Attorney General, State School
261 Superintendent, Commissioner of Insurance, Commissioner of Agriculture, Commissioner
262 of Labor, members of Congress, district attorneys not elected pursuant to Code Section
263 21-2-138, members of the General Assembly, and county officers not elected pursuant to
264 Code Section 21-2-139 shall be elected in the November election next preceding the
265 expiration of the term of office.

266 (b) Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior
267 courts, and county judicial officers, offices of local school boards, and nonpartisan offices
268 elected pursuant to Code Section 21-2-138 or 21-2-139 shall be elected in the nonpartisan
269 general election next preceding the expiration of the term of office.

270 (c) All general municipal elections to fill municipal offices shall be held on the Tuesday
271 next following the first Monday in November in each odd-numbered year. Public notice
272 of such elections shall be published by the governing authority of the municipality in a
273 newspaper of general circulation in the municipality at least 30 days prior to the elections.
274 In addition, the municipality shall immediately transmit a copy of such notice to the
275 Secretary of State.

276 (d) Whenever a municipal general primary or election is held in conjunction with the
277 general primary or November general election in even-numbered years, the time specified
278 for the closing of the registration list, the time within which candidates must qualify for the
279 municipal primary or election, and the time specified for the holding of any runoff
280 necessary shall be the same as specified for general elections."

SECTION 3.

281

282 Said chapter is further amended by adding a new Code section to read as follows:

283 "21-2-138.1.

284 (a) Notwithstanding any other provisions of this chapter to the contrary, the General
285 Assembly may provide by local Act for the nonpartisan elections of candidates to fill the
286 office of district attorney for a judicial circuit and the office of solicitor-general for a state
287 court.

288 (b) The names of all candidates who have qualified with the election superintendent for
289 such office of district attorney and office of solicitor-general shall be placed on the ballot
290 in a nonpartisan general election to be held and conducted jointly with the general primary
291 in each even-numbered year. No candidate for any such office shall be nominated by a
292 political party or by petition as a candidate of a political body or as an independent
293 candidate. Candidates for any such office shall have their names placed on the nonpartisan
294 portion of each ballot only after meeting those requirements prescribed in Code Section
295 21-2-132 specifically related to such nonpartisan candidates and by paying the requisite
296 qualifying fees as prescribed in Code Section 21-2-131. Candidates shall be listed on the
297 official ballot in a nonpartisan general election as provided in Code Sections 21-2-284.1
298 and 21-2-285.1, respectively. Except as otherwise specified in this chapter, the procedures
299 to be employed in conducting the nonpartisan general election of any such district attorney
300 or solicitor-general shall conform as nearly as practicable to the procedures governing
301 general elections; and such general election procedures as are necessary to complete this
302 nonpartisan general election process shall be adopted in a manner consistent with such
303 nonpartisan elections."

304

SECTION 4.

305 Section 1 of this Act shall become effective for purposes of appointing members of the
306 commission upon the approval of this Act by the Governor or upon its becoming law without
307 such approval. This Act shall become effective for all other purposes on July 1, 2022.

308

SECTION 5.

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