

Senate Bill 92

By: Senators Robertson of the 29th, Kennedy of the 18th, Walker III of the 20th, Cowsert of the 46th, Brass of the 28th 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 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 Oversight Commission,  
17 which shall have the power to discipline, remove, and cause involuntary retirement of

18 appointed or elected district attorneys or solicitors-general in accordance with such  
19 Paragraph. As used in this Code section, the term 'commission' means the Prosecuting  
20 Attorneys Oversight 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) 'Citizen' means an individual who is neither an attorney nor a judge and who is a  
46 registered voter in this state.

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

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

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

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

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

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

69 (iv) One attorney with prosecutorial experience shall be appointed by the Senate  
70 Committee on Assignments and shall serve a term of four years; provided, however,

71 that the initial appointment shall be for three years, and thereafter, successors to such  
72 member shall serve terms of four years.

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

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

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

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

87 (5) All members' initial terms shall begin on April 1, 2024; provided, however, that the  
88 initial term of a member under this paragraph shall not be construed as counting toward  
89 the limit of two full terms of service as provided for under paragraph (6) of this  
90 subsection.

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

98 replacement member from the same category of member. Any member of the  
99 commission shall serve no more than two full terms.

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

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

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

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

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

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

125 personal motor vehicle in connection with such attendance as members of the General  
126 Assembly receive.

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

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

133 (g) The commission, with the assistance of the Prosecuting Attorneys' Council of the State  
134 of Georgia, shall promulgate standards of conduct and rules for the commission's  
135 governance which will comport with due process and enforce the provisions of subsections  
136 (h) and (i) of this Code section; provided, however, that such standards and rules shall be  
137 effective only upon review and adoption by the Supreme Court. Such standards and rules  
138 shall allow for a full investigation of a district attorney or solicitor-general only upon  
139 majority vote of the investigative panel. When a commission member receives information  
140 relating to the conduct of a district attorney or solicitor-general, such member shall provide  
141 such information to the 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) Willful and persistent failure to perform his or her duties;

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

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

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

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

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) A lack of probable cause;

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

174 (D) An undisclosed conflict of interest;

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

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

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

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

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

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

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

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

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

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

228 (n) The commission shall commence by April 1, 2024, and the rules and regulations  
229 promulgated by such commission shall be established no later than April 1, 2025. No  
230 complaint shall be filed before July 1, 2025.

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

235 **SECTION 2.**

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

239 **SECTION 3.**

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