

WITHDRAWN

The House Committee on Judiciary Non-Civil offers the following substitute to SB 92:

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 Qualifications 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 Qualifications

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17 Commission, which shall have the power to discipline, remove, and cause involuntary
18 retirement of appointed or elected district attorneys or solicitors-general in accordance with
19 such Paragraph. As used in this Code section, the term 'commission' means the Prosecuting
20 Attorneys Qualifications 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) 'Judge' means an elected or appointed public official who presides over a court of
46 record.

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

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

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

56 (ii) One attorney with at least 5 years of service as an assistant district attorney or an
57 assistant solicitor-general shall be appointed by the Lieutenant Governor and shall
58 serve a term of four years; provided, however, that the initial appointment shall be for
59 two years, and thereafter, successors to such member shall serve terms of four years;

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

67 (iv) One attorney with at least 5 years of service as an assistant district attorney or an
68 assistant solicitor-general shall be appointed by the Senate Committee on
69 Assignments and shall serve a term of four years; provided, however, that the initial

70 appointment shall be for three years, and thereafter, successors to such member shall
71 serve terms of four years.

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

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

75 (A) One elected district attorney or elected solicitor-general shall be appointed by the
76 Governor for a term of four years and his or her successors shall serve terms of four
77 years;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

147 (2) Willful misconduct in office;

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

- 150 (4) With respect to solicitors-general, willful and persistent failure to carry out duties
151 pursuant to Code Section 15-18-66;
- 152 (5) Conviction of a crime involving moral turpitude;
- 153 (6) Conduct prejudicial to the administration of justice which brings the office into
154 disrepute; or
- 155 (7) Knowingly authorizing or permitting an assistant district attorney or assistant
156 solicitor-general to commit any act constituting grounds for removal under paragraphs (1)
157 through (6) of this subsection.
- 158 (i)(1) In any complaint filed with the commission alleging a violation of subsection (h)
159 and requesting an investigation of an elected or appointed district attorney or
160 solicitor-general, the complainant shall be required to file with the commission a sworn
161 affidavit detailing the personal knowledge of the facts supporting the complaint,
162 including any interest the complainant may have in the outcome of the case. The
163 complainant may attach documents to support the complaint. Nothing in this Code
164 section shall be construed to limit the ability of the commission to bring a complaint
165 pursuant to this Code section on its own motion.
- 166 (2) The commission may not entertain a complaint on the basis of a charging decision,
167 plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar,
168 or recommendation regarding bond unless the affidavits and any documents attached to
169 the complaint show it is plausible that the district attorney or solicitor-general made or
170 knowingly authorized the decision based on:
- 171 (A) Undue bias or prejudice against the accused or in favor of persons with interests
172 adverse to the accused;
- 173 (B) An undisclosed financial interest in the outcome of the prosecution;
- 174 (C) An undisclosed conflict of interest;
- 175 (D) Factors that are completely unrelated to the duties of prosecution; or

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

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

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

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

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

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

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

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

230 respondent has objections to it, to have the record settled by the hearing panel's presiding
231 officer. The hearing panel's order in a disciplinary or incapacity matter may be reviewed
232 by the Supreme Court in accordance with its rules and the rules of the commission.
233 (n) The commission shall commence by April 1, 2024, and the rules and regulations
234 promulgated by such commission shall be established no later than April 1, 2025. No
235 complaint shall be filed before July 1, 2025. The commission shall not receive complaint
236 submissions regarding misconduct that occurred prior to July 1, 2025, unless such alleged
237 misconduct is related to a continuous pattern of conduct that continues beyond that date.
238 (o) The authority of the commission shall be limited to incapacity or discipline regarding
239 the conduct of a district attorney or solicitor-general as a holder of such office. Nothing
240 in this Code section shall be construed as diminishing the authority of the Supreme Court
241 or the State Bar of Georgia to regulate the practice of law in this state."

242 **SECTION 2.**

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

246 **SECTION 3.**

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