

The Senate Committee on Judiciary offered the following substitute to SB 218:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to
2 provide that the Prosecuting Attorneys Qualifications Commission shall be assigned for
3 administrative purposes only to the Administrative Office of the Courts and shall be funded
4 by funds appropriated or otherwise available to the judicial branch of state government; to
5 provide for appeals from the decisions of hearing panels of the Prosecuting Attorneys
6 Qualifications Commission; to revise the date before which certain complaints of misconduct
7 shall be barred; to provide for executive director designation; to provide generally for
8 constitutionally or statutorily created organizations funded through the judicial branch of
9 state government expressly authorized by law to conduct investigations to provide for special
10 commission investigators; to provide for limited powers of arrest for such special
11 commission investigators; to provide for search warrants; to provide for subpoenas; to
12 provide for construction; to provide for definitions; to amend Code Section 16-11-130 of the
13 Official Code of Georgia Annotated, relating to exemptions from Code Sections 16-11-126
14 through 16-11-127.2, so as to provide for exemptions for current and retired members, staff,
15 and other employees of the Prosecuting Attorneys Qualifications Commission; to provide for
16 related matters; to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18

SECTION 1.

19 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended in Article
20 1 of Chapter 18, relating to general provisions relevant to prosecuting attorneys, by revising
21 paragraph (4) of subsection (f), paragraph (1) of subsection (j), and subsections (k), (m), and
22 (n), and by adding new subsections to Code Section 15-18-32, relating to the Prosecuting
23 Attorneys Qualifications Commission, authority, membership, ex parte communications,
24 governance, disciplinary actions, confidentiality, and privileged nature, to read as follows:

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

32 (B) Members of the commission who:

33 (i) Are not subject to the provisions of division (ii) of this subparagraph shall receive
34 the daily expense allowance and travel reimbursement provided for in
35 subparagraph (A) of this paragraph from funds appropriated or otherwise available
36 to the judicial branch of government; or

37 (ii) Pursuant to the terms and conditions of their official position, employment, or
38 contract with the state, are eligible to receive a daily expense allowance and travel
39 allowance for their service on the commission shall not receive daily expense
40 allowance and travel reimbursement provided for in subparagraph (A) of this
41 paragraph.

42 (C) Expense allowances and travel reimbursements shall be paid from ~~moneys~~ funds
43 appropriated or otherwise available to the ~~commission~~ judicial branch of state
44 government.”

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

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

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

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

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

59 (B) If an emergency situation exists; or

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

62 (3) A complaint is dismissed at any stage; provided, however, that such disclosure shall
63 be limited to disclosing the reason for such dismissal to the complainant; or

64 (4) A complaint is dismissed prior to an authorization of formal investigation; provided,
65 however, that such disclosure shall be limited to disclosing the statutory basis for such
66 complaint to the individual who was the subject of the complaint; and, provided, further,
67 that such disclosure shall not include the complainant's identity or the specifics of the
68 allegation."

69 "(m) A respondent ~~may~~ shall be entitled to appeal the decision of the hearing panel by
70 submitting a petition for review to the superior court of the county where such respondent
71 served as a district attorney or solicitor-general. Such appeal shall be subject to Chapter 3

72 of Title 5; provided, however, that the respondent shall have no right to a jury trial; and,
73 provided, further, that the superior court review shall be limited to determining whether the
74 decision of the hearing panel was arbitrary, capricious, or an abuse of discretion.

75 (m.1) A respondent who is subjected to public reprimand, censure, limitation on the
76 performance of prosecutorial duties, suspension, retirement, or removal shall be entitled
77 to a copy of the proposed record to be filed with the Supreme Court and, if the respondent
78 has objections to it, to have the record settled by the hearing panel's presiding officer. The
79 hearing panel's order in a disciplinary or incapacity matter may be appealed to the Superior
80 Court of Fulton County pursuant to Chapter 3 of Title 5.

81 (n) The commission shall commence by July 1, 2023,~~and the rules and regulations~~
82 ~~promulgated by such commission shall be established no later than October 1, 2023. No~~
83 ~~complaint shall be filed before October 1, 2023.~~ The commission shall not receive
84 complaint submissions regarding misconduct in office that occurred prior to ~~May 5, 2023~~
85 April 1, 2023, unless such alleged misconduct is related to a continuous pattern of conduct
86 that continues beyond that date."

87 "(q) The commission shall be a budget unit as defined in Part 1 of Article 4 of Chapter 12
88 of Title 45, the 'Budget Act'; provided, however, that the commission shall be assigned for
89 administrative purposes only to the Administrative Office of the Courts.

90 (r) The individual selected to serve as director of the commission may be designated with
91 the title of executive director by the commission."

92 **SECTION 2.**

93 Said title is further amended by adding a new chapter to read as follows:

94

"CHAPTER 2695 15-26-1.96 As used in this chapter, the term:97 (1) 'Commission' means the Prosecuting Attorneys Qualifications Commission.98 (2) 'Court of competent jurisdiction' means a superior court in any judicial circuit other
99 than the judicial circuit where the primary residence or principal business address of the
100 subject of investigation is located.101 (3) 'Special commission investigator' means an individual employed by the commission
102 to conduct investigations by the commission and who is currently certified by the Georgia
103 Peace Officer Standards and Training Council as having met the qualifications and
104 having completed the basic training requirements for a peace officer under Chapter 8 of
105 Title 35.106 (4) 'Subject of investigation' means the individual who is the subject of an investigation
107 by the commission.108 15-26-2.109 (a) The commission may employ investigators and special commission investigators to
110 conduct investigations by the commission.111 (b) A special commission investigator shall have the power of arrest in the performance
112 of his or her duties for the commission for crimes that:113 (1) Are committed within the special commission investigator's presence;114 (2) Are committed within the building, parking area, or curtilage of a building where the
115 commission's office is located; within any building, parking area, or curtilage of a
116 building where an official meeting or hearing of the commission is being conducted; or
117 while traveling to or from such area; and

118 (3) Involve the person, building, vehicle, or other personal property of any member or
119 employee of the commission, or the person, vehicle, or other personal property of any
120 individual attending a meeting or hearing of the commission or traveling to or from such
121 area.

122 (c) Nothing in this Code section shall be construed to:

123 (1) Confer the power of arrest for crimes that may be under investigation by the
124 commission but which are not provided for in subsection (b) of this Code section; or

125 (2) Affect or limit the powers or authority of investigators employed by any district
126 attorney's office, any solicitor-general's office, the Prosecuting Attorneys' Council of the
127 State of Georgia, or any sheriff or sheriff's deputy.

128 15-26-3.

129 (a) Search warrants authorized under this chapter shall issue only upon an application
130 under oath by a special commission investigator to a judge of a court of competent
131 jurisdiction containing probable cause to believe that records including medical, financial,
132 telephone, or stored electronic data, or any record not subject to public inspection or other
133 disclosure under Article 4 of Chapter 18 of Title 50 or other public disclosure laws are held
134 by an entity and that such records are material to an investigation by the commission.

135 (b) Upon an application that meets the requirements of subsection (a) of this Code section:

136 (1) The judge of the court of competent jurisdiction may issue a warrant ordering the
137 entity to provide the records sought, and such order shall include a provision of
138 nondisclosure to the entity's clients;

139 (2) The special commission investigator shall serve a copy of the warrant, but not the
140 affidavit, within ten days of issuance of such warrant either on an agent of the entity
141 holding such records at the physical location where the records are located or can be
142 accessed from, or on the legal compliance department of the entity holding such records
143 if such has been previously designated by the entity;

144 (3) The special commission investigator shall make a return to the court listing the
145 records obtained, the lack of records, or a statement that the warrant is being returned
146 unserved;

147 (4) The special commission investigator and the commission shall retain a true and/or
148 certified copy of the affidavit, warrant, and return;

149 (5) Upon service, the affidavit, warrant, and return shall be under seal of the court until
150 further order; and

151 (6) The records obtained shall remain confidential to the extent permitted by law, but
152 shall be permitted to be used in investigations and hearings.

153 15-26-4.

154 (a) A subpoena shall state that it is issued by the commission and the title of the
155 proceeding and shall command each person to whom it is directed to attend and give
156 testimony or produce evidence at a time and place specified by the subpoena.

157 (b) A clerk of court shall make subpoenas in blank available on demand by electronic or
158 other means to parties, or their counsel, or to the commission.

159 (c) An attorney representing a party in a proceeding before the commission, including
160 investigative proceedings and hearings, may issue and sign a subpoena obtained by
161 electronic or other means from the clerk of court as an officer of a court for any deposition,
162 hearing, or other matter to be conducted in conjunction with such proceeding.

163 (d) A duly appointed officer or director of the commission may compel by subpoena the
164 attendance of individuals at a proceeding before the commission, including investigative
165 proceedings and hearings, and the production of pertinent books, papers, and documents
166 for any deposition, hearing, or other matter to be conducted in conjunction with such
167 proceeding.

168 (e) A subpoena shall be completed prior to being served.

169 (f) Subpoenas are enforceable as provided in Code Section 24-13-26.

170 (g) Subpoena fees and costs shall be the same as those provided for in proceedings in
171 superior court.

172 (h) An individual who misuses a subpoena shall be subject to punishment for contempt of
173 court and a fine of not more than \$300.00 or not more than 20 days' imprisonment, or both,
174 in the superior court in the county in which the attendance or production is required.

175 (i) Any attack on the validity of a subpoena shall be heard and determined by the body
176 before which the matter is then pending or by the court wherein enforcement of the
177 subpoena is being sought. Any resulting order is not appealable prior to entry of a final
178 order in the proceeding, except appeal of a court order pursuant to the interlocutory appeal
179 procedures set forth in subsection (b) of Code Section 5-6-34."

180

SECTION 3.

181 Code Section 16-11-130 of the Official Code of Georgia Annotated, relating to exemptions
182 from Code Sections 16-11-126 through 16-11-127.2, is amended in subsection (a) by striking
183 "and" at the end of paragraph (15), by replacing the period with a semicolon at the end of
184 paragraph (16), and by adding new paragraphs to read as follows:

185 "(17) The director of the Prosecuting Attorneys Qualifications Commission, attorneys
186 and investigators employed by the Prosecuting Attorneys Qualifications Commission, and
187 appointed members of the investigative panel or hearing panel of the Prosecuting
188 Attorneys Qualifications Commission; and

189 (18) Former directors, attorneys, and investigators of the Prosecuting Attorneys
190 Qualifications Commission who are retired in good standing from their respective
191 positions and receiving or eligible to receive benefits from a county, municipal, State of
192 Georgia, state authority, or federal retirement system and would otherwise be qualified
193 to be issued a weapons carry license."

194

SECTION 4.

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