

SENATE BILL 92¹:PROSECUTING ATTORNEYS OVERSIGHT COMMISSION; CREATE

Amending O.C.G.A Title 15, Chapter 18

First signature: Senator Randy Robertson (29th)

Co-Sponsors: Senator John Kennedy (18th), Senator Larry Walker, III (20th), Senator Bill Cowsert (46th), Senator Matt Brass (28th), Senator Jason Anavitarte (31st)

Summary: “A BILL to be entitled an Act to amend Article 1 of Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to general provisions regarding prosecuting attorneys, so as to create the Prosecuting Attorneys Oversight Commission; to provide for definitions; to provide for the powers, composition, appointment, and confirmation of such commission; to provide for commission members' terms, vacancies, and removals; to provide for procedures and confidentiality; to provide for related matters; to provide for effective dates; to repeal conflicting laws; and for other purposes.”²

Status: Senate Bill 92 became effective on July 1, 2023.³

TEXT OF SENATE BILL 92⁴

SECTION 1.

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

“15-18-6.

The duties of the district attorneys within their respective circuits are:

- (1) To attend each session of the superior courts unless excused by the judge thereof and to remain until the business of the state is disposed of;

¹ S.B. 92, 157th Gen. Assemb., 1st Reg. Sess. (Ga. 2023), <https://www.legis.ga.gov/api/legislation/document/20232024/219947> (last visited Oct. 1, 2023).

² 2023-2024 Regular Session- S.B. 92, *Prosecuting Attorneys Oversight Commission; create*, GA GEN. ASSEMB., <https://www.legis.ga.gov/legislation/64008> (last visited Oct. 1, 2023) [hereinafter S.B. 92 Status Sheet].

³ *Id.*

⁴ S.B. 92, *supra* note 1.

- (2) To attend on the grand juries, advise them in relation to matters of law, and swear and examine witnesses before them;
- (3) To administer the oaths the laws require to the grand and trial jurors and to the bailiffs or other officers of the court and otherwise to aid the presiding judge in organizing the courts as he may require;
- (4) To review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances of each individual case under oath of duty as provided in Code Section 15-18-2;
- ~~(4)~~(5) To draw up all indictments or presentments, when requested by the grand jury, and to prosecute all indictable offenses;
- ~~(5)~~(6) To prosecute civil actions to enforce any civil penalty set forth in Code Section 40-6-163 and to prosecute or defend any other civil action in the prosecution or defense of which the state is interested, unless otherwise specially provided for;
- ~~(6)~~(7) To attend before the appellate courts when any criminal case emanating from their respective circuits is tried, to argue the same, and to perform any other duty therein which the interest of the state may require;
- ~~(7)~~(8) To advise law enforcement officers concerning the sufficiency of evidence, warrants, and similar matters relating to the investigation and prosecution of criminal offenses;
- ~~(8)~~(9) To collect all money due the state in the hands of any escheators and to pay it over to the educational fund, if necessary, compelling payment by rule or order of court or other legal means;
- ~~(9)~~(10) To collect all claims of the state which they may be ordered to collect by the state revenue commissioner and to remit the same within 30 days after collection; and on October 1 of every year to report to the state revenue commissioner the condition of the claims in their hands in favor of the state, particularly specifying:
 - (A) The amounts collected and paid, from what sources received and for what purposes, and to whom paid;
 - (B) What claims are unpaid and why;
 - (C) What judgments have been obtained, when, and in what court; and
 - (D) What actions are instituted, in what courts, and their present progress and future prospects;
- ~~(10)~~(11) To ensure disposition information is submitted in accordance with subsection (g) of Code Section 35-3-36 when a final disposition decision is made by a district attorney;

~~(11)~~(12) To assist victims and witnesses of crimes through the complexities of the criminal justice system and ensure that the victims of crimes are apprised of the rights afforded them under the law; and
~~(12)~~(13) To perform such other duties as are or may be required by law or which necessarily appertain to their office."

SECTION 2.

Said chapter is further amended by adding a new Code section to Article 1, relating to general provisions relative to prosecuting attorneys, to read as follows:

"15-18-32.

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

(b) The commission shall consist of eight members.

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

(2) The investigative panel shall be responsible for:

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

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

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

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

(3) The hearing panel shall be responsible for:

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

(B) Issuing disciplinary and incapacity orders;

(C) Issuing formal advisory opinions on its own initiative or on the recommendation of the investigative panel regarding the grounds for discipline set forth under subsection (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) 'Judge' means an elected or appointed public official who presides over a court of record.

(2) The Prosecuting Attorneys' Council of the State of Georgia 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 as an elected district attorney or elected solicitor-general 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 at least five years of service as an assistant district attorney or an assistant solicitor-general 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 at least five years of service as an assistant district attorney or an assistant solicitor-general 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 elected district attorney or elected solicitor-general shall be appointed by the Governor for a term of four years and his or her successors shall serve terms 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) One elected district attorney or elected solicitor-general shall be appointed by of the Senate Committee on Assignments and shall be the 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 and has formerly been a district attorney or a solicitor-general shall be appointed by the Speaker 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 shall be appointed by and their initial terms shall begin on July 1, 2023; 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;

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

(4) With respect to solicitors-general, willful and persistent failure to carry out duties pursuant to Code Section 15-18-66;

(5) Conviction of a crime involving moral turpitude;

(6) Conduct prejudicial to the administration of justice which brings the office into disrepute; or

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

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

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

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

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

(C) An undisclosed conflict of interest;

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

or

(E) 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.

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

(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 the 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 may appeal the decision of the hearing panel by submitting a petition to the superior court of the county where such respondent served as a district attorney or solicitor-general. 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 hearing panel's order in a disciplinary or incapacity matter may be appealed to the Superior Court of Fulton County pursuant to Chapter 3 of Title 5.
- (n) The commission shall commence by July 1, 2023, and the rules and regulations promulgated by such commission shall be established no later than October 1, 2023. No complaint shall be filed before October 1, 2023. The commission shall not receive complaint submissions regarding misconduct in office that occurred prior to the effective date of this Code section, unless such alleged misconduct is related to a continuous pattern of conduct that continues beyond that date.
- (o) The authority of the commission shall be limited to incapacity or discipline regarding the conduct of a district attorney or solicitor-general as a holder of such office. Nothing in this Code section shall be construed as diminishing the authority of the Supreme Court or the State Bar of Georgia to regulate the practice of law in this state.
- (p) In the event that a district attorney or solicitor-general is removed or involuntarily retired pursuant to this Code section, such individual shall be disqualified from being appointed or elected to the office of district attorney of any judicial circuit or to the office of solicitor-general of any county of this state for a period of ten years from the date of such removal or involuntary retirement."

SECTION 3.

Said chapter is further amended by revising paragraph (1) of subsection (b) of Code Section 15-18-66, relating to duties and authority regarding solicitors-general, as follows:

“(1) To review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances of each individual case under oath of duty as provided in Code Section 15-18-2, and, if necessary, investigate all criminal cases which may be prosecuted in state court;”

SECTION 4.

Chapter 4 of Title 21 of the Official Code of Georgia Annotated, relating to recall of public officers, is amended by revising paragraph (7) of Code Section 21-4-3, relating to definitions, as follows:

"(7) 'Grounds for recall' means:

(A) That the official has, while holding public office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her office and adversely affects the rights and interests of the public; and

(B) That the official:

- (i) Has committed an act or acts of malfeasance while in office;
- (ii) Has violated his or her oath of office;
- (iii) Has committed an act of misconduct in office;
- (iv) Is guilty of a failure to perform duties prescribed by law; or
- (v) Has willfully misused, converted, or misappropriated, without authority, public property or public funds entrusted to or associated with the elective office to which the official has been elected or appointed.

Discretionary performance of a lawful act or a prescribed duty shall not constitute a ground for recall of an elected public official; provided, however, that a judicial circuit district attorney's failure to perform the duties provided for in Code Section 15-18-6 or a state court solicitor-general's failure to perform the duties provided for in Code Section 15-18-66 shall constitute grounds for a recall of such elected official."

SECTION 5.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 6.

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

SPONSOR’S RATIONALE

I. Background

Senator Randy Robertson (“Senator Robertson”) proposed and sponsored Senate Bill 92, creating the Prosecuting Attorneys Oversight Commission (the “Commission”), to ensure the fair prosecution of crimes in Georgia and address cases where prosecuting attorneys choose which crimes are prosecuted in their districts without regard to the prescription of the Georgia legislature.⁵ Senator Robertson is the Senate Majority Whip and, among other Committee memberships, serves as Secretary of the Senate Government Oversight Committee and Vice-Chairman of the Senate Public Safety Committee.⁶ Senator Robertson, a more than 30-year law enforcement veteran himself, sought to align the levels of peer review for prosecutors with those already in place for law enforcement officers, judges, and private attorneys.⁷ Serious concern over prosecutorial conduct and inquiry into state oversight of elected prosecutors in Georgia reached the legislature in 2020 following the death of Ahmaud Arbery, and the subsequent failure of a district attorney in that area to bring justice to Arbery and his family; The enacted version of Senate Bill 92 incorporates parts of Senate Bill 92, House Bill 229, and House Bill 231, and is the culmination of more than three years of debate on the issue.⁸

⁵ Georgia State Senate, Legislative day 27 (Part 1), VIMEO, (Mar. 2, 2023), <https://vimeo.com/showcase/9076378?video=694155945> (beginning at 1:15).

⁶ *Senator Randy Robertson*, GEORGIA STATE SENATE, <https://www.senate.ga.gov/senators/en-US/member.aspx?Member=4926&Session=> (last visited Oct. 1, 2023).

⁷ Georgia State Senate, *supra* note 5.

⁸ Georgia State Senate, *supra* note 5; Email from Representative Houston Gaines to James L. Crocker (Oct. 12, 2023, 10:13 EST) (on file with author) [hereinafter Email from Rep. Gaines].

II. Rationale

Sponsors of Senate Bill 92 proposed a peer oversight commission to review instances of prosecutorial misconduct that the Georgia Bar and impeachment process are ill-equipped to address.⁹ They argue that the Commission is necessary to discipline and remove those prosecutors who make charging decisions based on personal motives or blanket disagreements with certain laws or classes of crimes.¹⁰ According to sponsors of Senate Bill 92, the cumbersome nature of the impeachment process and negligible discipline power of the State Bar of Georgia necessitate direct peer oversight of certain prosecutorial decisions and practices.¹¹ The Bill grants broad power to the Commission to enact its own rules and procedures, but is intended by sponsors to benefit citizens and promote justice in Georgia.¹²

a. Personal motives influence certain charging decisions.

Sponsors of Senate Bill 92 sought to address instances of district attorneys and solicitor-generals choosing which cases to charge or accuse based on personal beliefs rather than the statutes enacted by the General Assembly and signed into law by the Governor.¹³ Supporters of Senate Bill 92 argue that the Commission is crucial to ensuring that victims of crime are not deprived of justice because the prosecutor for their circuit chooses not to indict crimes of that type or class or to only charge crimes when the victim fits certain parameters.¹⁴ Sponsors contend the lack of direct oversight diminishes community faith and trust in the criminal justice system.¹⁵ Additionally, the Commission acts as a peer review body to ensure prosecutors who bring baseless indictments and accusations face the appropriate consequences.¹⁶ The Georgia Constitution provides that each

⁹ Georgia State Senate, *supra* note 5.

¹⁰ *Id.*

¹¹ Georgia State Senate, *supra* note 5; Georgia Rules & Regulations State Bar Note, Part IV [hereinafter "Georgia Rules of Professional Conduct"] (The State Bar of Georgia, does not act on its own to discipline an attorney. Instead, the State Disciplinary Board issues a Notice of Discipline to the Supreme Court of Georgia; at which point the attorney may respond and defend against the disciplinary action, or if they fail to respond they will be in default and the Supreme Court may impose discipline).

¹² Georgia State Senate, *supra* note 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

branch of the State government is “separate and distinct,” vesting executive, legislative, and judicial powers exclusively to those that serve each function.¹⁷ Sponsors believe a prosecutor who brings, or fails to bring, charges based on parameters outside of what is enacted by the legislature subverts the constitutionally mandated separation of legislative and executive power within the Georgia state government.¹⁸

b. Prosecutors categorically refuse to prosecute certain laws.

Prosecutors across the state of Georgia have refused to prosecute certain crimes within their districts.¹⁹ Sponsors of Senate Bill 92 argue that the Commission is necessary to ensure prosecuting attorneys meet their duty to enforce the duly enacted laws of Georgia.²⁰ Senate Bill 92 is responsive to situations similar to that in the Western Judicial Circuit, where a district attorney is currently facing litigation alleging that her decision not to prosecute marijuana-related offenses is a breach of her duty of office.²¹ Representative Houston Gaines (“Representative Gaines”) of District 120 noted that some prosecutors in Georgia failed to meet their duties and have harmed their offices as a result.²²

Senate Bill 92 addresses these situations by providing “oversight by other current and formerly elected prosecutors and judges to ensure that prosecutors are doing their jobs” and enforcing Georgia’s laws.²³ Senator John Albers notes that when a prosecutor refuses to prosecute certain acts, they effectively usurp the position of the Georgia Legislature.²⁴ Other sponsors are concerned that the open refusal to prosecute crimes encourages

¹⁷ Ga. Const. Art. I, § II, Para. III.

¹⁸ Georgia State Senate, *supra* note 5.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Georgia State Senate, *supra* note 5; Emily Johnson, *Ga. DA Must Face Suit Challenging Her Job Performance*, LAW 360 PULSE, May 9, 2023, https://plus.lexis.com/document/?pdmfid=1530671&crd=5168a74d-554c-4ea4-a123-5f2268c36c69&pddocfullpath=%2Fshared%2Fdocument%2Flegalnews%2Furn%3AcontentItem%3A686C-1XY1-JSJC-X0KX-00000-00&pdcontentcomponentid=511141&pdteaserkey=&pdslpamode=false&pdworkfolderlocatorid=NOT_SAVED_IN_WORKFOLDER&ecomp=n74k&earg=sr3&prid=7440608b-2cef-4a72-899d-7d09df9a9a34

²² Email from Rep. Gaines, *supra* note 8 (Representative Gaines represents District 120 covering Clarke, Oconee, Jackson, and Barrow counties, of these Clarke and Oconee are members of the Western Judicial Circuit).

²³ *Id.*

²⁴ Georgia State Senate, *supra* note 5.

individuals to engage in those unlawful acts.²⁵ Under O.C.G.A. § 15-18-6 district attorneys have a duty to “to prosecute all indictable offenses” and solicitor-generals, under O.C.G.A. § 15-18-66, have a duty to “investigate all criminal cases which may be prosecuted in state court”; sponsors of Senate Bill 92 argue that prosecutors across the state routinely breach these duties when they decide categorically not to enforce specific laws or prosecute certain classes of crimes.²⁶

c. Existing avenues to discipline prosecutors are inadequate.

Although ways to discipline and remove elected district attorneys and solicitor-generals exist, the sponsors of Senate Bill 92 argue that those means are inadequate and cumbersome.²⁷ House sponsors of Senate Bill 92 note that the Bill would have expedited the process of removing district attorneys engaged in workplace harassment and ethical indiscretions outside the practice of law.²⁸ Senate Bill 92 has language providing for the discipline of prosecutors who commit acts of “moral turpitude”, a term Representative Joseph Gullett opined would likely include sexual misconduct.²⁹

Senator Robertson contended that existing avenues to discipline and remove elected prosecutors are insufficient and unwieldy.³⁰ Filing for and succeeding in a recall is often expensive and risky, and other means are not quick enough to effectively address wayward prosecutors.³¹ Sponsors argue that other bodies with the ability to oversee prosecutors give deference to prosecutorial discretion in many of the situations the Commission seeks to

²⁵ Georgia State Senate, *supra* note 5.

²⁶ O.C.G.A. § 15-18-6; O.C.G.A. § 15-18-66; Georgia State Senate, *supra* note 5.

²⁷ Georgia State Senate, *supra* note 5; Georgia House of Representatives, House Chamber Day 39 03.27.23 PT 1, YOUTUBE, (Mar. 27, 2023), <https://www.youtube.com/watch?v=9AW0USa2vic&t=1165s> (beginning at 6:09).

²⁸ Georgia House of Representatives, *supra* note 27.

²⁹ S.B. 92, *supra* note 1; Georgia House of Representatives, *supra* note 27 (Representative Joseph Gullett later noted that the Commission would have been able to remove a district attorney within his district quicker than preexisting measures. Opponents argue that “moral turpitude” is largely undefined by the law which could lead to misapplication of the broad discipline powers granted to the Commission).

³⁰ Georgia State Senate, *supra* note 5; *See also* Georgia Rules of Professional Conduct, *supra* note 11 (In particular, State Bar complaints require the Supreme Court of Georgia to act upon a Notice of Discipline transmitted, following investigation, by the State Disciplinary Board. The Court must determine whether a violation has occurred before discipline is imposed unless the attorney fails to respond to the Notice of Discipline).

³¹ Georgia State Senate, *supra* note 5.

address.³² Representative Mesha Mainor (“Representative Mainor”) notes that for the State Attorney-General to take action against a prosecutor a crime must first have been committed.³³ She further contends that because filing a Bar complaint often requires laypeople to detail specific legal infractions, the State Bar of Georgia cannot adequately address individual complaints.³⁴

III. Conclusion

Sponsors argued that there were no adequate methods of addressing prosecutors who fail to meet their obligations and duties of office.³⁵ Sponsors of this bill believe that the Commission will benefit the citizens of Georgia by providing efficient means of reviewing individual complaints against potentially wayward district attorneys and solicitor-generals.³⁶ Senate Bill 92 creates a peer review board designed to ensure that prosecutors review each case based on the laws prescribed by the General Assembly rather than their personal beliefs or categorical disagreements with certain laws; the bill further provides the citizens of Georgia with an avenue to report potential violations of these duties.³⁷ Sponsors contend the Commission is critical to ensure prosecutors remain agents of the law rather than the writers of it.³⁸

OPPOSITION’S RATIONALE

I. Background

Opponents initially viewed the legislation leading to Senate Bill 92 as an attack on minority prosecutors as support for a commission of this kind did not garner serious backing until the election of 14 minority prosecutors in 2020.³⁹ Opponents argue that the Commission will deprive voters of local

³² Georgia House of Representatives, *supra* note 27.

³³ *Id.*

³⁴ *Id.*

³⁵ Email from Rep. Gaines, *supra* note 8.

³⁶ Email from Rep. Gaines, *supra* note 8; Georgia State Senate, *supra* note 5.

³⁷ Georgia State Senate, *supra* note 5; Email from Rep. Gaines, *supra* note 8.

³⁸ Georgia State Senate, *supra* note 5.

³⁹ Jeff Amy, *Some Georgia Prosecutors Blast, Others Support Oversight Bills*, FULTON COUNTY DAILY REPORT, Feb. 28, 2023, https://plus.lexis.com/document/?pdmfid=1530671&crid=2e6cd35c-97be-49bd-945a-c899feafcaed&pddocfullpath=%2Fshared%2Fdocument%2Flegalnews%2Furn%3AcontentItem%3A67NJ-VS01-JBM3-R0K3-00000-00&pdworkfolderid=79dea851-18af-410b-a386-dbd8baeeb0a9&pdopendocfromfolder=true&prid=b064fe41-ffe7-40cf-bbdc-156ab5d17259&ecom=vb_k&earg=79dea851-18af-410b-a386-dbd8baeeb0a9.

power, distract prosecutors from performing their duties, and is redundant as existing remedies adequately address prosecutorial misconduct.⁴⁰ Others fear the Commission will become a bureaucratic fixture used to attack certain prosecutors under partisan motivation.⁴¹ Some claim the Bill was designed to directly attack Fulton County District Attorney Fani Willis after she indicted former President Donald Trump.⁴²

II. Rationale

Senate Bill 92 is contested on 3 primary grounds: it deprives voters of power in local elections, it will prevent prosecutors from efficiently operating their offices, and existing disciplinary procedures provide adequate oversight for prosecutors.⁴³ Those opposing the bill contended that the Commission bureaucratizes the critically local role of prosecutors and deprives voters of power over their local judicial systems.⁴⁴ Others argue that the fear of Commission proceedings and the potential of limitless complaints will distract prosecutors and impair the justice systems of every locality in Georgia.⁴⁵ Opponents of Senate Bill 92 contend that the Commission is wholly unnecessary, arguing that existing review processes already adequately address the concerns of the Bill's sponsors.⁴⁶

a. Senate Bill 92 deprives voters of power in the justice system.

Opponents of Senate Bill 92 argue that the Bill will take power out of the hands of citizens and local electors and reallocate it to a state-run bureaucracy.⁴⁷ Senator Josh McLaurin ("Senator McLaurin") warned that the function of a prosecuting attorney is inherently local, rendering a statewide agency unqualified to review prosecutorial decisions; other opponents further argued that local voters are better suited to review exercises of prosecutorial discretion.⁴⁸ Representative Tanya Miller argued that the Commission will undermine voter's control over the cases prosecuted within

⁴⁰ Georgia State Senate, *supra* note 5; Georgia House of Representatives, *supra* note 27.

⁴¹ Amy, *supra* note 39.

⁴² *Id.*

⁴³ Georgia State Senate, *supra* note 5; Georgia House of Representatives, *supra* note 27.

⁴⁴ Georgia State Senate, *supra* note 5.

⁴⁵ Georgia House of Representatives, *supra* note 27.

⁴⁶ Georgia State Senate, *supra* note 5.

⁴⁷ *Id.*

⁴⁸ Georgia State Senate, *supra* note 5; Georgia House of Representatives, *supra* note 27.

their community, which may result in state political biases influencing local proceedings.⁴⁹

According to Senator Elena Parent (“Senator Parent”), the bill threatens to prevent prosecutors from making routine decisions that affect entire categories of crimes, such as bail considerations, or the refusal to prosecute archaic laws such as those against adultery, sodomy, and fornication.⁵⁰ Prosecutors cannot reasonably indict or accuse all crimes that may have occurred in their communities, and opponents argue that local voters should have the right to review these types of prosecutorial decisions during elections.⁵¹ The duty of a prosecutor, in the view of Senator Parent, is not to be a zealous advocate for the state, but to do justice by their constituents – a standard best reviewed by local voters rather than a state bureaucracy.⁵²

b. The Commission will distract prosecutors from their offices.

Representatives Tanya Miller and Dar’Shun Kendrick (“Representative Kendrick”) opposed Senate Bill 92 stating that the complaints filed with the Commission will create a distraction for prosecutors and prevent them from effectively enforcing the law.⁵³ The language of Senate Bill 92 allows citizens of other states and countries to file complaints that would take time away from already overextended Georgia district attorney and solicitor-general’s offices.⁵⁴ Representative Kendrick expressed her concern over the volume of claims that both citizens and nonresidents may file.⁵⁵ The potential for the Commission created by Senate Bill 92 to be weaponized against political rivals, regardless of claim veracity, concerned Senate opponents.⁵⁶

c. Existing avenues of discipline address sponsors’ concerns.

Under existing law, prosecuting attorneys can be removed or disciplined by State Bar procedures, prosecuted by the Attorney-General for the state, or removed via articles of impeachment in the General Assembly.⁵⁷ Senator

⁴⁹ Georgia House of Representatives, *supra* note 27.

⁵⁰ Georgia State Senate, Legislative day 39 (Pt. 3), VIMEO, (Mar. 27, 2023), <https://vimeo.com/showcase/9076378?video=812163051> (beginning at 5:38).

⁵¹ *Id.*

⁵² *Id.*

⁵³ Georgia House of Representatives, *supra* note 27.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Georgia State Senate, *supra* note 5.

⁵⁷ *Id.*

Harold Jones II (“Senator Jones”) argues that these measures and the conscience of the voters provide sufficient review of prosecuting attorneys.⁵⁸ Senator Jones states that the language of Senate Bill 92 is broad and grants the Commission a significant amount of power in determining what conduct is impermissible.⁵⁹ He continues to note that the provisions contained in O.C.G.A. § 15-18-6 and O.C.G.A. § 15-18-66 render a prosecutor’s failure to review each case unlawful and a violation of the prosecutor’s duty.⁶⁰

In many cases, the court of public opinion and subsequent elections are sufficient to oversee and regulate prosecutorial conduct.⁶¹ The language of Senate Bill 92 exempts certain prosecuting attorneys from its oversight.⁶² Unlike the Judicial Qualifications Commission (“JQC”) which hears and reviews complaints and decisions of all judges in Georgia, the Prosecuting Attorneys Oversight Commission only oversees attorneys serving in specific prosecutorial capacities.⁶³ Senator Parent challenged Senate Bill 92 on this ground, claiming it unequally applies oversight to local prosecutors while certain state prosecutors are immune from Commission review.⁶⁴ Opponents of Senate Bill 92 argue that the Commission is a redundant bureaucratic fixture that will obfuscate existing avenues of prosecutorial oversight and discipline.⁶⁵

III. Conclusion

Those who spoke in opposition of Senate Bill 92 noted fears and concerns regarding the broad power and discretion given to the Commission.⁶⁶ Opponents sought to quash this bill to preserve, with the citizens, power over their local justice systems and ensure complaints and frivolous disciplinary proceedings do not prevent prosecutors from operating their offices efficiently.⁶⁷ Viewing the Commission as yet another bureaucratic fixture in

⁵⁸ Georgia State Senate, *supra* note 5.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Georgia State Senate, *supra* note 50.

⁶³ *Id.*

⁶⁴ *Id.* (Sponsors of the bill suggested potential future legislation to place the unaddressed attorneys with prosecutorial capacities under Commission oversight).

⁶⁵ Georgia House of Representatives, *supra* note 27.

⁶⁶ Georgia State Senate, *supra* note 5.

⁶⁷ Georgia State Senate, *supra* note 5; Georgia House of Representatives, *supra* note 27.

the face of existing disciplinary measures, challengers of Senate Bill 92 state the Commission is wholly unnecessary to address sponsors' concerns.⁶⁸

IMPLICATIONS IN GEORGIA

Georgia joins New York, Connecticut, and Indiana in forming a state agency relating to the conduct and function of prosecuting attorneys, of which, Georgia's is vested with some of the broadest powers over discipline and remand.⁶⁹ The Commission created by Senate Bill 92 has the power to review individual complaints and reprimand prosecutors for certain exercises of discretion, which may threaten a fundamental component of operating an efficient district attorney or solicitor-general's office.⁷⁰ The Commission will expedite the process of disciplining and removing prosecutors who fail to meet their duties of office.⁷¹ Depending on the rules promulgated by the Commission, Georgia could see a variety of potential results, such as

⁶⁸ Georgia State Senate, *supra* note 5.

⁶⁹ *New York State Commission on Prosecutorial Conduct*, NEW YORK STATE, <https://www.ny.gov/new-york-state-commission-prosecutorial-conduct> (New York's commission serves a purely investigative role and may not discipline prosecutors on its own. Its power over individual prosecutors is limited to submitting findings and recommendations to the relevant attorney grievance committee); *Indiana Prosecuting Attorneys Council*, INDIANA STATE GOVERNMENT, <https://www.in.gov/ipac/> (The Indiana Prosecuting Attorneys Council ("IPAC") serves primarily to support and assist prosecutors in legal research and advancing justice. Currently IPAC has no power to discipline or remove prosecutors from office. However, the Indiana State Senate passed Senate Bill 284 during the 2023 session; the bill would have established a review board under IPAC with the power to investigate "noncompliant prosecutors" who "categorically refuse to enforce a criminal law." It did not purport to grant IPAC the power to discipline or remove a noncompliant prosecutor, but instead would have authorized an appeals court judge to appoint a special prosecutor for the district until the elected prosecutor is no longer noncompliant. *See* S.B. 284, 122nd Gen. Assemb., 2023 Session (In. 2023), *available at* <https://legiscan.com/IN/bill/SB0284/2023> (Senate passed on Feb. 28, 2023, referred to the House of Representatives on Mar. 1, 2023, engrossed on Mar. 1, 2023, referred to House Committee on Ways and Means on Mar. 30, 2023, died in committee)); *State of Connecticut Criminal Justice Commission*, CONNECTICUT STATE DIVISION OF CRIMINAL JUSTICE, <https://portal.ct.gov/DCJ/Criminal-Justice-Commission/Criminal-Justice-Commission/Criminal-Justice-Commission-Landing-Page> (The Connecticut commission is established under Article IV of the state's constitution which concurrently vests the prosecutorial power of the state in some of its members—the Chief State Attorney, and the state attorneys for the many judicial districts of the state. *See* Conn. Const. Art. IV., Sec. 27. The commission appoints the prosecutor for each of the 13 judicial districts in Connecticut and is exclusively empowered to remove state attorneys from office for just cause. *See* Conn. Gen. Stat. § 51-278, 278b); S.B. 92, *supra* note 1.

⁷⁰ Georgia State Senate, *supra* note 5.

⁷¹ Georgia State Senate, *supra* note 5.

heightened prosecution standards and increased accountability within the justice system, or targeted political attacks against individual prosecutors.⁷² Because Senate Bill 92 grants the Commission extensive power and discretion over the standards and procedures it sets for itself, the impact of this bill is highly speculative and whether the Commission ultimately advances justice remains hotly contested.⁷³

I. Potential Impact Upon Prosecutors' Daily Function

Senator McLaurin contends that the Commission will make prosecutors feel less free to enforce laws and address the issues of their local communities by instead shifting their focus to following the rules set forth by the Commission.⁷⁴ Senate Bill 92 has the potential to harm transparency between local prosecutors and their constituents.⁷⁵ Because the Commission can penalize prosecutors for stated policies regarding when they decline to prosecute certain crimes, the Bill inhibits the ability of prosecutors to share their prosecutorial philosophies with their voters and undermines the ability of communities to make informed choices when prosecutors run for election.⁷⁶

The Commission's actual effect on the practice of individual prosecutors remains highly speculative and has the potential to be either profound or profoundly negligible.⁷⁷ The Bill seeks to ensure that prosecutors review each case for which probable cause exists before deciding if the case will be accused or indicted.⁷⁸ The language of the Bill is broad and permits a prosecutor to exercise discretion in which cases they bring so long as those

⁷² Georgia House of Representatives, *supra* note 27; Georgia State Senate, *supra* note 5.

⁷³ S.B. 92, *supra* note 1; Georgia House of Representatives, *supra* note 27; Georgia State Senate, *supra* note 5.

⁷⁴ Georgia State Senate, *supra* note 5.

⁷⁵ Emily Johnson, *The Attys Who Rep Ga. DAs In Challenge To Watchdog Board*, LAW 360 PULSE, Aug. 10, 2023, https://plus.lexis.com/document/?pdmfid=1530671&crid=9dea05f8-24d0-4d6f-ad52-017731c670bc&pddocfullpath=%2Fshared%2Fdocument%2Flegalnews%2Furn%3AcontentItem%3A68X6-BGD1-JNJT-B3XP-00000-00&pdworkfolderid=9771569e-04b0-4010-b69c-e227fd661ec8&pdopendocfromfolder=true&prid=2182f946-09f0-4edb-9462-a96a4c178e9e&ecomp=vb_k&earg=9771569e-04b0-4010-b69c-e227fd661ec8

⁷⁶ *Id.*

⁷⁷ Georgia State Senate, *supra* note 5.

⁷⁸ Garrison Douglas, *Gov. Kemp Signs Legislation Creating Prosecuting Attorneys Qualifications Commission*, GOVERNOR BRIAN P. KEMP OFFICE OF THE GOVERNOR, May 5, 2023, <https://gov.georgia.gov/press-releases/2023-05-05/gov-kemp-signs-legislation-creating-prosecuting-attorneys-qualifications>.

where probable cause exists are examined.⁷⁹ Additionally, the Bill grants the Commission discretion to decide which activities and conduct outside of prosecuting specific cases are those of “moral turpitude” or otherwise unacceptable, placing the power to decide how the Commission affects prosecutors in Georgia into the Commission’s hands.⁸⁰ The members of the Commission have broad discretion in establishing the standards and procedures for determining and addressing misconduct, and much of the effect of Senate Bill 92 on the state of Georgia depends on their determinations.⁸¹

II. Constitutional & Legal Implications of Senate Bill 92

Following its passage, a group of district attorneys challenged the constitutionality of Senate Bill 92 in Fulton County Superior Court.⁸² The plaintiffs assert that the Georgia constitution gives district attorneys and solicitor-generals discretion in seeking justice according to the needs and wants of their communities.⁸³ The Georgia Constitution does, however, provide for discipline and removal of prosecutors “as provided by general law.”⁸⁴ Georgia law is rather clear on the scope of discretion exercised in criminal proceedings and how the legislature may expand or limit the extent to which members of the executive and judiciary enforce laws.⁸⁵ For nearly a century, judges have been required to impose criminal punishments without

⁷⁹ Georgia State Senate, *supra* note 5.

⁸⁰ Georgia State Senate, *supra* note 5 (Political biases of initial Commission members may influence which Georgia prosecutors are substantially affected by the Commission, and how their rules are enforced upon prosecutors); *See* discussion, *infra* IMPLICATIONS IN GEORGIA III. (The Supreme Court of Georgia declined to take any action after the Commission proposed standards of conduct and rules for governance of the Commission to the Court for approval).

⁸¹ S.B. 92, *supra* note 1.

⁸² Rosie Manins, *Ga. DAs Fight Peach State's New Prosecutorial Watchdog*, LAW 360 PULSE, Aug. 2, 2023, https://plus.lexis.com/document/?pdmfid=1530671&crd=ac388321-1a2d-403b-95d6-f6926f20f511&pddocfullpath=%2Fshared%2Fdocument%2Flegalnews%2Furn%3AcontentItem%3A68VG-HB31-F8SS-61N2-00000-00&pdworkfolderid=ac6de245-39a2-4a69-acc6-1a4e1289c407&pdopendocfromfolder=true&prid=2fdf0249-caff-4534-aeaa-94e1087deabb&ecomp=vb_k&earg=ac6de245-39a2-4a69-acc6-1a4e1289c407.

⁸³ *Id.*

⁸⁴ Ga. Const. Art. VI, § VIII, Para. II

⁸⁵ *Johnson v. State*, 169 Ga. 814, 152 S.E. 76 (1930) (Georgia ratified its current constitution in 1983 also denoting the exclusivity of the legislative, executive, and judicial powers. *See also, In Re: PAQC Rules and Code of Conduct*, *infra* note 92.).

discretion to alter a sentence outside the guidelines set by law.⁸⁶ Consequently, only the legislature is with the power to alter a judge's discretion over sentencing – a sentiment carried into Senate Bill 92, preserving the General Assembly as those who determine the consequences for committing certain acts in Georgia.⁸⁷

The decision of a prosecutor not to prosecute a class of crimes may result in a similar subversion of the state constitutional process as when judges prescribe sentences out of accord with those provided by the General Assembly – a practice the Georgia Supreme Court held unconstitutional in *Johnson v. State*.⁸⁸ The Commission could address the potential separation of powers issue arising from prosecutorial decisions more efficiently than a constitutional lawsuit, but an abundance of complaints over discretionary acts traditionally reserved to prosecutors may overstrain already underfunded and understaffed district attorney and solicitor-general's offices.⁸⁹

Because sponsors of Senate Bill 92 sought to align the levels of review over prosecuting attorneys with those of judges, provided by the JQC, whether the legislature is permitted to limit prosecutorial discretion in the form of an oversight commission will likely become a hotly contested issue in the pending Fulton County action.⁹⁰ Implications of this Bill may very well be nullified by the action to overturn it, but as it stands now, the language of Senate Bill 92, establishing the Commission's broad discretion in promulgating their procedure and rules, renders the potential impact of this Bill upon the citizens and attorneys of Georgia highly speculative.⁹¹

**III. Discussion of the Nov. 22, 2023, Georgia Supreme Court Order:
IN RE: PROSECUTING ATTORNEYS QUALIFICATIONS COMMISSION
RULES AND CODE OF CONDUCT.**

⁸⁶ *Johnson v. State*, *supra* note 85.

⁸⁷ *Id.*

⁸⁸ Georgia State Senate, *supra* note 5; *Johnson v. State*, *supra* note 85.

⁸⁹ Georgia State Senate, *supra* note 5.

⁹⁰ *Id.* (The JQC, and its inherent discipline power, is established by Article VI, Section VII, Paragraph V of the Georgia Constitution; S.B. 92 provides for discipline under Section VIII, Paragraph II of the same Article despite the absence of a constitutional provision establishing the Commission. An amendment to the Georgia Constitution may have been appropriate to align the new Commission with the JQC, but this may not be dispositive of issues surrounding its constitutionality).

⁹¹ Manins, *supra* note 82.

On November 22, 2023, the Supreme Court of Georgia issued an order after the Commission transmitted, to the Court, draft standards of conduct and rules for the Commission's governance.⁹² The Court notes that regulating the practice of law is within the scope of judicial power, but questions, without deciding, whether this power extends to conduct that occurs outside of the practice of law.⁹³ The Court then turns to the question of whether a district attorney or solicitor-general exercises judicial power, executive power, or both; while declining to answer the question, the Court does comment that they have grave doubts as to whether prosecutors exercise any judicial power despite their offices being established in the judicial article of the constitution.⁹⁴ In a showing of practical constitutional avoidance, the Court declined to take any action relating to the rules and regulations proposed by the Commission, nor did they rule on whether the Court was empowered to review or approve these standards based on the aforementioned concerns and the lack of adversarial proceedings leading to and necessitating a ruling on constitutional issues of first impression.⁹⁵ Under the current language of the Bill, the Supreme Court doubts its authority to approve the rules proposed by the Commission as it may result in unconstitutional regulation of an elected official conducting executive, rather than judicial, functions.⁹⁶ If Senate Bill 92 instead required the Court to review and approve the Commission's rules, review of and a ruling on these issues of first impression would have been necessitated.⁹⁷

LEGISLATIVE GENEALOGY

⁹² *In Re: Prosecuting Attorney's Qualifications Commission Rules and Code of Conduct*, Matter No. S24U0190 (Ga. Nov. 22, 2023) [hereinafter "*In Re: PAQC Rules and Code of Conduct*"].

⁹³ *Id.* (The Commission has broad discretion over its rules leading to regulation of activity outside the practice of law, such as acts of "moral turpitude").

⁹⁴ *Id.* (The Georgia Constitution vests judicial power exclusively in the enumerated courts contained within the article and grants the Supreme Court authority to oversee and regulate judges, and the practice of law in Georgia. The Court does not have express constitutional authorization to regulate and oversee prosecuting attorneys specifically).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *In Re: PAQC Rules and Code of Conduct*, *supra* note 92.

Senate Bill 92 was first entered into the Senate Hopper on February 2, 2023.⁹⁸ Senate read and referred on February 6, 2023.⁹⁹ Senate Committee favorably reported by substitute on February 27, 2023.¹⁰⁰ Senate second read was on February 28, 2023, and Senate third read was on March 2, 2023.¹⁰¹ The Senate passed/adopted by substitute on March 2, 2023.¹⁰² House first readers occurred on March 6, 2023, and House second readers occurred on March 7, 2023.¹⁰³ House Committee favorably reported by substitute on March 23, 2023.¹⁰⁴ House third readers occurred on March 27, 2023.¹⁰⁵ The House passed/adopted by substitute on March 27, 2023.¹⁰⁶ The Senate agreed to House amendments or substitutions on March 27, 2023.¹⁰⁷ The Senate sent Senate Bill 92 to the Governor on April 5, 2023.¹⁰⁸ Senate date signed by Governor May 5, 2023.¹⁰⁹ Act 349 on May 5, 2023.¹¹⁰ Effective date of July 1, 2023.¹¹¹

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⁹⁸ S.B. 92 Status Sheet, *supra* note 2.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ S.B. 92 Status Sheet, *supra* note 2.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ S.B. 92 Status Sheet, *supra* note 2.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

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