

**BY-LAWS OF THE  
PROSECUTING ATTORNEYS' COUNCIL OF THE STATE OF GEORGIA**

**Article I. - Purpose**

- Section 1. These By-Laws are adopted pursuant to O.C.G.A. § 15-18-42(b) and establish procedures for the conduct of meetings of the Prosecuting Attorneys' Council of the State of Georgia (hereinafter referred to as "the Council").
- Section 2. The purposes of the Council are:
- (a) To assist the prosecuting attorneys throughout the state in their efforts against criminal activity in the state;<sup>1</sup>
  - (b) With the advice and consent of a majority of the district attorneys, to adopt and amend uniform policies, rules, and regulations relating to appointment, classification, promotion, transfer, demotion, leave, travel, records, reports, and training of personnel which shall apply to all state paid personnel employed by the district attorneys.<sup>2</sup>
  - (c) To establish salary schedules for each such state paid position authorized by law within the district attorneys' offices other than the district attorney as provided in O.C.G.A. § 15-18-19(e).<sup>3</sup>
  - (d) To serve as fiscal officer for the prosecuting attorneys of this state and prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the district attorneys' and solicitors-general's offices;<sup>4</sup>
  - (e) On or before June 1 of each year, the council shall establish and furnish to each district attorney and the state auditor the travel budget for each judicial circuit based on the amount appropriated by the General Assembly for such purpose.<sup>5</sup>

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<sup>1</sup> O.C.G.A. § 15-18-40(a); *State v. Cook*, 172 Ga. App. 433 (1984).

<sup>2</sup> O.C.G.A. § 15-18-19(e).

<sup>3</sup> O.C.G.A. § 15-18-40(e).

<sup>4</sup> O.C.G.A. § 15-18-40(b)(1).

<sup>5</sup> O.C.G.A. § 15-18-12(e)(2).

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- (f) From such funds as may be appropriated or otherwise available for the operation of the superior courts or prosecuting attorneys, to provide such administrative functions, services, supplies, equipment, or operating expenses as may be necessary for the fulfillment of the duties and responsibilities of such prosecuting attorneys;<sup>6</sup>
- (g) To conduct or approve for credit or reimbursement, or both, basic and continuing legal education courses or other appropriate training programs for the district attorneys, solicitors-general, and other prosecuting attorneys of this state and the members of the staffs of such officials<sup>7</sup> and to prescribe an initial training program for personnel designated as a special drug prosecutor pursuant to O.C.G.A. § 15-18-46(b).<sup>8</sup>
- (h) If a judicial circuit, or portion thereof, is merged with, consolidated with, or otherwise becomes a part of more than one other judicial circuit, to equitably allocate those personnel positions for the judicial circuit, or portion thereof, which has been merged with, consolidated with, or otherwise become a part of another judicial circuit.<sup>9</sup>
- (i) To develop guidelines for district attorneys to request the temporary assistance of any retired district attorney, assistant district attorney, solicitor-general, assistant solicitor-general, or retired attorney from the staff of the Department of Law or the Council who is receiving benefits under Title 47 or is retired in good standing and receiving benefits from a county or municipal retirement system and who has a minimum of ten years of service in any combination of such offices, provided that funds are available for such purpose;<sup>10</sup> and
- (j) To purchase policies of liability insurance or contracts of indemnity or to participate in the state insurance and indemnification program established pursuant to Chapter 9 of Title 45 on behalf of the solicitors-general of the state courts and their staffs

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<sup>6</sup> O.C.G.A. §§ 15-18-40(c)(2); 15-18-73(b) (“The Prosecuting Attorneys' Council of the State of Georgia may, to the extent that funds or other resources are available to the council for such purpose, provide such additional equipment or services as may be requested by the solicitors-general”).

<sup>7</sup> O.C.G.A. § 15-18-45(a).

<sup>8</sup> O.C.G.A. § 15-18-45(b).

<sup>9</sup> O.C.G.A. § 15-18-28(b).

<sup>10</sup> O.C.G.A. § 15-18-30.

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when engaged in the performance of their official duties. The council shall pay any premiums out of such funds as may be available for the support of the district attorneys and solicitors-general of this state;<sup>11</sup> and

- (k) To exercise such other powers, privileges, and duties as may be reasonable and necessary for the proper fulfillment of its purposes.<sup>12</sup>

Section 3. The Council may not:

- (a) Exercise any power, undertake any duty, or perform any function assigned by law to the Governor of this state, the Attorney General, any district attorney, or any solicitor or solicitor-general of any court of record in this state;<sup>13</sup>
- (b) Provide compensation from its funds to any administrative or clerical personnel employed by the council if the personnel are then receiving retirement compensation from the Trial Judges and Solicitors Retirement Fund, the Peace Officers' Annuity and Benefit Fund, the Sheriffs' Retirement Fund of Georgia, the Superior Court Clerks' Retirement Fund of Georgia, the Superior Court Judges Retirement Fund of Georgia, or any other retirement fund created by state law, except for county or municipal retirement funds, to provide compensation for past services as a judicial officer, prosecuting attorney, court officer, or law enforcement officer.<sup>14</sup>

**Article II. - Members**

Section 1. Members.

- (a) As provided by O.C.G.A. § 15-18-41, the Council shall consist of nine members, six of whom shall be district attorneys and three of whom shall be solicitors or solicitors-general of courts of record.<sup>15</sup>

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<sup>11</sup> O.C.G.A. § 15-18-74(d). In *State v. Cook*, 172 Ga. App. 433 (1984), the court held that O.C.G.A. § 15-18-74(d) did not preclude attorneys employed by the Council from assisting District Attorneys as special assistant district attorneys.

<sup>12</sup> O.C.G.A. § 15-18-44(a)(9).

<sup>13</sup> O.C.G.A. § 15-18-46.

<sup>14</sup> O.C.G.A. § 15-18-44(d).

<sup>15</sup> O.C.G.A. § 15-18-41(a).

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- (b) The term of office of each member shall be for a period of four years. No member of the Council shall be eligible to succeed himself or herself for a consecutive term as a member<sup>16</sup> except where such member was elected to the Council to fill a vacancy caused by the death, resignation, removal, or failure of reelection of a member.<sup>17</sup>

Section 2. Election of Members.

- (a) At a regularly scheduled meeting of the Council immediately preceding the expiration of a member's term of office as a member, the Council shall elect a new member to succeed the member whose term is expiring.<sup>18</sup> The election of new members shall take precedence over all other matters pending before the Council at such meeting following the call to order and approval of the minutes of the previous meeting.
- (b) At least ninety days prior to the expiration of a member's term of office, the Executive Director shall notify the president of the District Attorneys' Association of Georgia or the Georgia Association of Solicitors-General, as appropriate, of the impending vacancy and invite the organization to submit the names of eligible prosecutors as possible successors to such member to the Chairman. Upon receipt of the names of possible successors, the Chairman shall forward them to the Council members for their consideration.<sup>19</sup>
- (c) The Council is not bound to accept the recommendations of such organizations referred to in Paragraph (2) of this subsection,<sup>20</sup> and any member of the Council may nominate any eligible District Attorney, Solicitor or Solicitor-General to fill an impending or actual vacancy on the Council.<sup>21</sup>

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<sup>16</sup> O.C.G.A. § 15-18-41(c).

<sup>17</sup> Minutes, July 20, 1976, p. 3.

<sup>18</sup> O.C.G.A. § 15-18-41(c).

<sup>19</sup> Minutes, July 1, 1975, p. 1; restated Minutes December 1, 1978, p. 3.

<sup>20</sup> See *Rogers v. Medical Assoc. of Ga.*, 244 Ga. 151, 153 (1979) (the delegation of the power of appointment to public office to a private organization is unconstitutional).

<sup>21</sup> Minutes, December 1, 1978, p. 3.

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Section 3. Vacancies.

- (a) In the event that a member of the Council ceases to hold the office which was the basis for such member being on the Council, such person's position on the Council shall automatically be vacated.<sup>22</sup>
- (b) The Council shall, at the next regular or special meeting following a position on the Council being vacated, elect a qualified person to serve for the remainder of the unexpired term of the member whose seat is vacant.<sup>23</sup> Such election shall take precedence over all other matters pending before the Council at such meeting following the call to order and approval of the minutes of the previous meeting. The person elected to fill such vacancy shall take office immediately upon his or her election.
- (c) In the event of multiple vacancies on the Council such that the remaining members do not constitute a quorum as provided in Article IV, a majority of the remaining members shall constitute a quorum for the purpose of filling such vacancies.<sup>24</sup>

**Article III. - Officers.**

Section 1. The officers of the Council and their duties are:

- (a) Chairman.<sup>25</sup>

The Chairman:

- (1) Presides at all meetings of the Council;
- (2) Presides at any conference of the District Attorneys or Solicitors-General when they are meeting in their official capacity for the purpose of adopting

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<sup>22</sup> O.C.G.A. § 15-18-41(d).

<sup>23</sup> O.C.G.A. § 15-18-41(d).

<sup>24</sup> O.C.G.A. § 15-18-41(d).

<sup>25</sup> O.C.G.A. § 15-18-42(b); Minutes, July 1, 1975, p. 1.

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uniform policies, rules, regulations which are binding on them or their offices;

- (3) Appoints the chair and the members of all standing and special committees of the Council;
- (4) Delegates specific duties to Council members, except where otherwise provided by law, Council Rules or these By-Laws;
- (5) Subject to funds being available for such purpose and in accordance with such guidelines as the Council may adopt, approve requests made by a district attorney for the temporary assistance of a retired prosecuting attorney as provided by O.C.G.A. § 15-18-30;<sup>26</sup>
- (6) Performs such other duties as are incident to the office of Chairman or which necessarily appertain thereto and such other duties as may be prescribed by the Council or by law.

(b) Vice Chairman.<sup>27</sup>

The Vice Chairman:

- (1) Performs the duties of the Chairman if the Chairman is absent, or is unable, or if a majority of the Council determines that the Chairman refuses to perform the duties of the office;
- (2) Performs such other duties as may be delegated to him or her by the Chairman or the Council;
- (3) Performs such other duties as are incident to office of Vice Chairman or which necessarily appertain thereto and such other duties as may be prescribed by the Council or by law.

(c) Secretary.<sup>28</sup> The Secretary:

- (1) If the Chairman and the Vice Chairman are absent, or are unable or if a majority of the Council determines that such officers refuse to perform the duties of their office, performs the duties of the Chairman;<sup>29</sup>

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<sup>26</sup> O.C.G.A. § 15-18-30.

<sup>27</sup> Minutes, July 1, 1975, p. 1.

<sup>28</sup> Minutes, July 1, 1975, p. 1. Note: This position was originally created as the "Secretary-Treasurer." Beginning July 1, 1978, the title "Secretary" has been used. Minutes, June 1, 1978, p. 3.

<sup>29</sup> Minutes, August 15, 1999, p. 1.

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- (2) Insure that accurate minutes of all meeting of the Council are taken and maintained in the Council offices and such other locations as may be authorized by law;
- (3) Insures that notices of all meetings are given as required by law, Council Rules and these By-Laws;
- (4) Maintains a register of the addresses, telephone numbers, email addresses and other means of contacting each member of the Council;
- (5) Performs such other duties as are incident to office of Secretary or which necessarily appertain thereto and such other duties as may be prescribed by the Council or by law.

Section 2. Election of Officers.

- (a) The officers of the Council shall be elected annually by a majority of the members as provided by O.C.G.A. § 15-18-42(b) and shall serve until their successors have been elected. An officer of the Council may be elected to succeed himself or herself.<sup>30</sup>
- (b) Except as provided in Section 4 of this Article, new officers shall assume their duties on the later of July 1 of each year or immediately following adjournment of the meeting at which they were elected.

Section 3. Vacancies. In the event of a vacancy of an officer, the Council shall select a successor who shall serve for the remainder of the unexpired term of such officer. Such officer shall assume their duties immediately following their selection.

**Article IV. - Council Meetings**

Section 1. Meetings. The Council shall meet in regular session at least once each calendar quarter.<sup>31</sup> The Council shall meet in special session at the call of the Chairman or when requested by any five members of the Council.

Section 2. Notice. Notice of the time and place of meetings shall be given in advance by the Secretary to each member by any means, including electronic methods of communication, which will insure receipt by the members.

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<sup>30</sup> O.C.G.A. § 15-18-42(b); Minutes, June 1, 1979, p. 3.

<sup>31</sup> O.C.G.A. § 15-18-42(a); Minutes, July 1, 1975, p. 2.

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Section 3.     **Location.**       Except as provided in Section 4 of this Article, Council meetings shall be held at the principal office of the Council or at such other place within the State of Georgia as may be designated by the Chairman.

Section 4.     **Meetings Conducted by Electronic Means.**   The Council, and any committees thereof, may conduct regular or special meetings by telephonic or other electronic means provided all members are given notice of the meeting in advance and all members have the opportunity to participate. All persons participating in a telephonic or other electronic meeting must be able to hear each other at the same time.<sup>32</sup> The minutes of electronic meetings will be kept in the same manner as regular meetings.

Section 5.     **Quorum.**

(a)     Except as otherwise provided in O.C.G.A. § 15-18-41(d) and Section 4 of Article III of these By-Laws, a simple majority of the members shall constitute a quorum for the conduct of business.<sup>33</sup>

(b)     Once it is established that a quorum is present, the continued presence of a quorum will be presumed unless the contrary is shown by a vote or a member suggests the absence of a quorum. If it is shown that a quorum is not present, no debate nor motion, except to adjourn, or to recess pursuant to a previous order entered by unanimous consent, shall be in order.<sup>34</sup>

Section 6.     **Adoption of Policies, Rules or Regulations.**

(a)     Any matter which has the effect of adopting, amending, altering or repealing a policy of the Council or any policy, rule or regulation adopted pursuant to O.C.G.A. §§ 15-

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<sup>32</sup>     Robert's Rules of Order, § 50. The Council has met by telephone conference call on at least six occasions.

<sup>33</sup>     O.C.G.A. § 1-3-1(d)(5).

<sup>34</sup>     Subsection (b) is derived from the Rules of the United States Senate & § 40 of Robert's Rules of Order. It allows the Council to conduct routine business such as hearing reports or discussing business even if a quorum is not present. No vote however may be taken in the absence of a quorum.

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18-12, 15-18-19(c) or 15-18-30, or adopting or amending a pay schedule shall be submitted in writing in the form of a resolution.<sup>35</sup>

- (b) Any such resolution adopting, amending, altering or repealing such policy, rule, or regulation shall distinctly describe the policy, rule or regulation to be adopted, amended, altered or repealed as well as the alteration to be made.<sup>36</sup>
- (c) No such resolution shall be adopted at the same meeting at which it is introduced unless the resolution shall have been submitted to the Council in writing not less than thirty days prior to the meeting at which it is to be considered; provided, however, that the Council may by a two-thirds vote of the members waive the thirty day requirement.<sup>37</sup>

Section 7. As an agency of the Judicial Branch, the Council is not covered by the Georgia Open Meetings Law, O.C.G.A. § 50-14-1, et seq.<sup>38</sup> The vote on any matter covered in executive session shall be taken in public and recorded in the minutes. The minutes and records of the Council are subject to the Open Records Act and the Georgia Records Act.<sup>39</sup>

Section 8. Voting.

- (a) Each member, including the Chairman, shall be entitled to one vote.
- (b) A simple majority of the members present shall be sufficient to decide all matters except the adoption or amendment of Council By-Laws, the adoption of policies,

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<sup>35</sup> Subsection (a) requires that policies, rules or regulations which bind the Council or the District Attorneys be reduced to writing and submitted to the Council in the form of a resolution. This is designed to eliminate the problem which has occurred between 1999 and 2001 when the Council attempted to change the manner in which state-paid legal secretaries would receive salary advancements without amending the applicable personnel regulation.

<sup>36</sup> The language of subsection (b) is derived from Ga. Const., Art. III, Sec. V, Para IV. It is intended to insure that the Council members know exactly what the text for a proposed policy, rule or regulation will be.

<sup>37</sup> Subsection (c) is designed to insure that Council members have adequate notice of a proposed change to policies, rules or regulations unless a super majority (2/3) agree to wave the advance notice requirement.

<sup>38</sup> See *Fathers Are Parents Too, Inc. v. Hunstein*, 202 Ga. App. 716 (1992); *Coggin v. Davey*, 233 Ga. 407 (1975); Ga. Op. Att'y Gen. No. 79-25.

<sup>39</sup> O.C.G.A. §§ 50-18-70, 50-18-91.

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rules or regulations pursuant to O.C.G.A. § 15-18-19(c), the approval of contracts and the appointment or removal of the Executive Director, which shall require an affirmative vote by a majority of the members of the Council.<sup>40</sup>

- (c) Any member may move to adopt a matter by unanimous consent, which motion, if seconded, shall be submitted to the Council without debate

Section 9. Agenda.

- (a) Prior to any meeting, an agenda of all matters expected to come before the Council at such meeting shall be sent to all members as far in advance of the meeting as reasonably possible. The agenda shall be available to all other persons upon request.
- (b) Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item.
- (c) Unless otherwise provided in the notice of the meeting, the order of business at regular meetings shall be:
  - (1) Call to order;
  - (2) Approval of minutes of the previous meeting;
  - (3) Election of members and officers, when required;
  - (4) Report of the Executive Director;
  - (5) Staff Reports;
  - (6) Committee Reports;
  - (7) Old Business;
  - (8) New Business;
  - (9) Adjournment.
- (d) Any member or the Chairman may move to consider an item of business out of the order in which it appears in the agenda.

**Article V. - Committees**

Section 1. Standing Committees.

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<sup>40</sup> O.C.G.A. § 1-3-1(d)(5).

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(a) The standing committees of the Council are:<sup>41</sup>

- (1) Budget & Finance;<sup>42</sup>
- (2) Capital Litigation;<sup>43</sup>
- (3) Computer Technology;<sup>44</sup>
- (4) District Attorney Personnel;<sup>45</sup>
- (5) Long Range Planning;<sup>46 47</sup>
- (6) Personnel & Compensation;<sup>48</sup>
- (7) Training;<sup>49</sup> and

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<sup>41</sup> Other standing committees created by the Council which no longer function include: Child Support (6/1/1978, amended 10/1/1981); Prosecution Records (7/19/1979); Joint Federal-State Law Enforcement Committee (6/7/1979); Constitutional Revision (12/5/80); Drug Prosecutions (3/25/1990); Olympic Planning (1/14/1994); Quality Assurance (12/1/1995); Compensation and Retirement (12/1/1995); Race, Ethnic and Gender Committee (21/1/1995). The Quality Assurance and Racial Ethnic and Gender Diversity Committees became subcommittees of the Long Range Planning Committee in Minutes, August 5, 1998, p. 3. The Compensation and Retirement Committee became a subcommittee of the Legislation Committee at the same time. With the exception of the Olympic Planning Committee which had a sunset clause included in the Resolution which created it and the Child Support Committee which was abolished in 10/29/82, no record of the others having been formally abolished can be found.

<sup>42</sup> First referred to in Minutes, October 17, 1996, p. 10; re-established in Minutes, December 1, 1995, p. 15; Resolution adopted renaming committee as the "Budget and Fiscal Affairs Committee" and specifying its duties and membership adopted January 18, 1996, Minutes, January 18, 1996, p. 27. It is referred to as the "Budget & Finance Committee" beginning in Minutes, April 19, 1996, p.29.

<sup>43</sup> Minutes 6/9/2000, p. 3; Minutes, July 30, 2000, p. 5.

<sup>44</sup> Minutes, July 30, 2000, p. 5.

<sup>45</sup> Created in the Rules of the Prosecuting Attorneys' Council of Georgia, R. 2.2, ratified December 10, 1999, effective July 1, 2000.

<sup>46</sup> First referred to in Minutes, June 2, 1977, p. 1; re-established as the "Long Range Planning Committee" in Minutes, December 1, 1995, p. 17.

<sup>47</sup> Resolution 05-09-02, adopted September 23, 2005, eliminated former paragraph (5) Legislation and Publications Committee, which was established in Minutes, December 12, 1996, p. 14; re-established in Minutes, December 1, 1995, p. 17, and renumbered the remaining paragraphs.

<sup>48</sup> First referred to in Minutes, December 6, 1990, p. 31; re-established in Minutes, December 1, 1995, p. 16.

<sup>49</sup> Created July 19, 1979 as the "Education Committee." Minutes, July 19, 1979, p. 4; re-established as the "Training Committee" in Minutes, December 1, 1995.

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(8) Victim Services.<sup>50</sup>

- (b) Each standing Committee shall consist of a chairperson and not less than two members who are members of the Council. The Council Chairman may appoint additional persons to a committee who are not members of the Council.<sup>51</sup> Within a committee each member of the committee shall be entitled to one vote.
- (c) Members of standing committees shall serve for a one-year term and are eligible to be reappointed.
- (d) A majority of the members of a committee shall constitute a quorum for the conduct of business.

Section 2. The Council may create such special committees as are deemed necessary or desirable. The membership, functions and duties of each such committee shall be specified by the Chairman.

**Article VI. - Principal Office**

Section 1. The principal office of the Council shall be Suite 400, 104 Marietta Street, Atlanta, Georgia, 30303, which shall be the mailing address of the Council.<sup>52</sup>

Section 2. The Council may establish such regional offices as may be necessary to accomplish the duties and responsibilities of the Council.

**Article VII. - Seal**

[Reserved].<sup>53</sup>

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<sup>50</sup> Established in Minutes, December 1, 1995, p. 16.

<sup>51</sup> Original provision adopted Minutes, December 1, 1995, p. 16 - 17; amended September 23, 2005, Minutes, September 23, 2005, p. \_\_\_\_.

<sup>52</sup> O.C.G.A. § 15-18-44(7).

<sup>53</sup> O.C.G.A. § 15-18-44(6).

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**Article VIII. - Staff**

- Section 1. The Council staff shall consist of the Executive Director, who shall be the chief operating officer of the Council and such additional staff as the Council may authorize.<sup>54</sup>
- Section 2. The minutes shall reflect any action taken by the Council or the Executive Director regarding the employment or compensation of members of the staff.<sup>55</sup>

**Article IX. - Adoption and Amendment of By-Laws.**

- Section 1. These By-Laws shall be effective upon their approval by a majority of the members of the Council.<sup>56</sup>
- Section 2. The By-Laws may be altered, amended, or repealed and new By-Laws may be adopted by a majority of the members of the Council at any regular or special meeting, provided that each member has been provided notice of the intention to alter, amend, or repeal and adopt new By-Laws and a copy of the proposed text thereof, not less than three days prior to the meeting.<sup>57</sup>

**Article X. - Repeals**

- Section 1. All policies, procedures and practices heretofore adopted by the Council which govern meetings of the Council itself or which established standing committees are hereby repealed.
- Section 2. All policies and procedures relating to Council or Council staff operations which are in conflict with these By-Laws are hereby repealed.

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<sup>54</sup> O.C.G.A. § 15-18-44(8); see also *State v. Cook*, 172 Ga. App. 433 (1984).

<sup>55</sup> Beginning with the first meeting of the Council in July 1975, the Council has approved each staff position and has approved on an individual basis every pay raise for staff members.

<sup>56</sup> O.C.G.A. § 15-18-42(b).

<sup>57</sup> O.C.G.A. § 15-18-42(b).

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Section 3. Nothing in these By-Laws shall be construed as altering, amending or repealing any Rule or regulation of the Council which was adopted in accordance with O.C.G.A. § 15-18-19(c) and ratified by the District Attorneys.

Adopted October 18, 2001; amended September 23, 2005.