

Senate Bill 234

By: Senator Hamrick of the 30<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To enact the "Corruption Prevention Act;" to provide a short title; to provide for legislative  
2 findings; to amend Title 45 of the Official Code of Georgia Annotated, relating to public  
3 officers and employees, so as to change the procedures relating to the indictment of certain  
4 public officials; to provide for related matters; to provide for an effective date and  
5 applicability; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 This Act shall be known and may be cited as the "Corruption Prevention Act."

9 **SECTION 2.**

10 The General Assembly finds:

11 (1) That the investigation and prosecution of corruption of public officials is being  
12 impeded by the fact that certain public officials are provided special protection during  
13 criminal investigations and grand jury proceedings which are not afforded to other citizens  
14 of this state;

15 (2) That Article I, Section I, Paragraph II, of the Georgia Constitution provides, in part,  
16 that: "Protection to person and property is the paramount duty of government and shall be  
17 impartial and complete";

18 (3) That, as originally enacted in 1833, Code Section 45-11-4 of the Official Code of  
19 Georgia Annotated applied only to persons currently holding the office of justice of the  
20 peace who were accused of "malpractice in office or by using oppression or tyrannical  
21 partiality, or other conduct unbecoming his character as an upright magistrate, in the  
22 administration, and under the color of his office," which offense was not otherwise  
23 described by law;

24 (4) Since its enactment, said Code section has been expanded beyond its original intent as  
25 interpreted by the courts which was to prevent the disruption of the "smooth, uninterrupted

1 functioning of government, so important to the public welfare," *Sweeney v. Balcolm*, 358  
 2 F.2d 415, 417 (5th Cir. 1966), to where it now appears to protect corrupt former officials,  
 3 the prosecution of whom will not disrupt the functioning of government;

4 (5) That the court in *Sweeney v. Balcolm* found that "Georgia appears to be the only state  
 5 in the nation which accords to public officials charged with malfeasance in office the right  
 6 of appearance before the grand jury;"

7 (6) That, in its present form, said Code Section 45-11-4 infringes on the authority and  
 8 functioning of grand juries by not allowing the amendment or alteration of an indictment  
 9 against a current or former public official while it is being considered by the grand jury,  
 10 when grand juries have the right and the duty to make such amendments or alterations  
 11 when considering an indictment against any other person;

12 (7) That, by requiring that an accused current or former public official be served with an  
 13 indictment which "specially sets forth the merits of the complaint," 15 days prior to its  
 14 presentation to the grand jury, the present law provides corrupt public officials with the  
 15 opportunity to improperly influence witnesses, suborn perjury, and obstruct justice.

### 16 SECTION 3.

17 Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees,  
 18 is amended by striking Code Section 45-11-4, relating to malpractice, partiality, neglect of  
 19 duties, conduct unbecoming office, or demanding more cost than that to which entitled, and  
 20 inserting in lieu thereof a new Code Section 45-11-4 to read as follows:

21 "45-11-4.

22 (a) As used in this Code section, the term:

23 (1) 'County officer' shall mean any elected county officer, including the judge of the  
 24 probate court, clerk of the superior court, tax receiver, tax collector, and tax  
 25 commissioner where such office has replaced the tax receiver and tax collector, and any  
 26 county commissioner.

27 (2) 'Municipal officer' shall mean any mayor or elected member of any municipal  
 28 governing authority.

29 (3) 'Public officer' shall mean a county officer, a municipal officer, and state officials as  
 30 provided in Code Section 45-15-11.

31 ~~(b) Any elected county officer, including the judge of the probate court, clerk of the~~  
 32 ~~superior court, tax receiver, tax collector, and tax commissioner, where the office has~~  
 33 ~~replaced the tax receiver and tax collector, any member of any board of commissioners, or~~  
 34 ~~any mayor or member of any municipal governing authority, presently or formerly holding~~  
 35 ~~such office; The provisions of this Code section shall apply to any public officer who shall~~  
 36 be charged with malpractice, misfeasance, or malfeasance in office; or with using

1 oppression or tyrannical partiality in the administration or under the color of his or her  
 2 office; or, when required by law, with willfully refusing or failing to preside in or hold his  
 3 or her court at the regular terms thereof, or when it is his or her duty under the law to do  
 4 so; or with using any other deliberate or illegal means to delay or avoid the due course or  
 5 proceeding of law; or with any other illegal conduct in the performance or administration  
 6 of the office which is unbecoming the character of a public officer; or who shall willfully  
 7 and knowingly demand more cost than he or she is entitled to by law in the administration  
 8 and under color of his or her office ~~may be indicted;~~ which conduct does not otherwise  
 9 constitute a violation of the criminal laws of this state.

10 (c)(1) The Any indictment brought pursuant to subsection (b) of this Code section shall  
 11 specially set forth the merits of the complaint against the accused public officer. A copy  
 12 of the proposed bill of indictment shall be served on the accused public officer at least 15  
 13 days before it is presented to the grand jury.

14 (2) Before an indictment against a public official charging the official with a crime  
 15 which is alleged to have occurred while such official was in the performance of an  
 16 official duty is returned by a grand jury, the official shall be notified of the contemplated  
 17 action by the district attorney of the county wherein the grand jury shall convene at least  
 18 15 days prior to the matter being presented to the grand jury. Such notice shall set forth  
 19 a general characterization of the subject matter and purpose of said investigation.

20 (d) The accused shall have the right to appear before the grand jury to make such sworn  
 21 statement as he or she shall desire at the conclusion of the presentation of the state's  
 22 evidence. The accused shall not be subject to examination, either direct or cross, and shall  
 23 not have the right individually or through his or her counsel to examine the state's  
 24 witnesses. The accused and his or her counsel shall have the right to be present during the  
 25 presentation of all evidence and alleged statements of the accused on the proposed  
 26 indictment, presentment, or accusation, after which he the accused and his or her counsel  
 27 shall retire instanter from the grand jury room to permit the grand jury to deliberate upon  
 28 the indictment.

29 (e) At any time during the presentation of evidence or during deliberations, the grand jury  
 30 may amend the indictment or instruct the district attorney to cause a new indictment to be  
 31 drawn as in any other case. In such case, a copy of the amendment or new indictment, if  
 32 it relates to the accused public official, shall be provided to the accused public official and  
 33 his or her counsel.

34 (f) If a true bill is returned by the grand jury, the indictment shall, as in other cases, be  
 35 published in open court and shall be placed on the superior court criminal docket of cases  
 36 to be tried by a petit jury. If the accused is convicted, he or she shall be ~~punished by a fine~~

1 ~~or by imprisonment, or both, at the discretion of the court; and, if still in office, he shall be~~  
2 removed from office."

3 **SECTION 4.**

4 Said title is further amended by striking Code Section 45-15-11, relating to rights of state  
5 official before grand jury when charged with misfeasance or malfeasance, and inserting in  
6 lieu thereof a new Code Section 45-15-11 to read as follows:

7 "45-15-11.

8 Before an indictment charging any state official with misfeasance or malfeasance in office  
9 is presented to a grand jury, ~~the rights provided in Code Section 45-11-4 shall be afforded~~  
10 ~~said official~~ and the district attorney of the county where the grand jury will convene shall  
11 notify the Attorney General of such contemplated action."

12 **SECTION 5.**

13 This Act shall become effective upon its approval by the Governor or upon its becoming law  
14 without such approval, except that Section 3 shall apply only to crimes committed on or after  
15 the effective date of this Act.

16 **SECTION 6.**

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