

Senate Bill 234

By: Senator Hamrick of the 30th

AS PASSED SENATE

**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 severability; to provide for an
5 effective date and 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 for crimes
12 other than a violation of subsection (b) of Code Section 45-11-4 is being impeded by the
13 fact that certain public officials are provided special protection during criminal
14 investigations and grand jury proceedings which are not afforded to other citizens of this
15 state;

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

19 (3) That, as originally enacted in 1833, Code Section 45-11-4 of the Official Code of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

1 (4) Since its enactment, said Code section has been expanded beyond its original intent
 2 as interpreted by the courts which was to prevent the disruption of the "smooth,
 3 uninterrupted functioning of government, so important to the public welfare," *Sweeney*
 4 *v. Balcolm*, 358 F.2d 415, 417 (5th Cir. 1966), to where it now appears to protect corrupt
 5 former officials, the prosecution of whom will not disrupt the functioning of government;

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

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

15 SECTION 3.

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

20 "45-11-4.

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

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

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

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

30 (b) Any elected county officer, including the judge of the probate court, clerk of the
 31 superior court, tax receiver, tax collector, and tax commissioner, where the office has
 32 replaced the tax receiver and tax collector, any member of any board of commissioners, or
 33 any mayor or member of any municipal governing authority, presently or formerly holding
 34 such office, who shall be charged with malpractice A public officer may be charged under
 35 this Code section for:

36 (1) Malpractice, misfeasance, or malfeasance in office; or with

1 (2) Using ~~using~~ oppression or tyrannical partiality in the administration or under the
2 color of his or her office; ~~or~~,

3 (3) When ~~when~~ required by law, ~~with~~ willfully refusing or failing to preside in or hold
4 his or her court at the regular terms thereof, or when it is his or her duty under the law to
5 do so; ~~or with~~

6 (4) Using ~~using~~ any other deliberate ~~or illegal~~ means to delay or avoid the due course or
7 proceeding of law; or ~~with any other illegal conduct in the performance or administration~~
8 ~~of the office which is unbecoming the character of a public officer; or who shall~~

9 (5) Willfully ~~willfully~~ and knowingly ~~demand~~ demanding more cost than he or she is
10 entitled to by law in the administration and under color of his or her office ~~may be~~
11 ~~indicted.~~

12 (c) A conviction for violating subsection (b) of this Code section shall be punished as for
13 a misdemeanor and the accused shall be removed from office.

14 (d) This Code section shall only apply to a public officer charged under subsection (b) of
15 this Code section. This Code section shall not apply when a public officer is charged with
16 any other crime alleged to have occurred while such official was in the performance of an
17 official duty.

18 (e) This Code section shall only apply to a public officer holding office at the time of
19 indictment and not to former office holders.

20 (f) The Any indictment brought pursuant to subsection (b) of this Code section shall
21 specially set forth the merits of the complaint against the accused public officer. A copy
22 of the proposed bill of indictment shall be served on the accused public officer at least 15
23 days before it is presented to the grand jury.

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

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

1 (i) If a true bill is returned by the grand jury, the indictment shall, as in other cases, be
 2 published in open court and shall be placed on the superior court criminal docket of cases
 3 to be tried by a petit jury. ~~If the accused is convicted, he shall be punished by a fine or by~~
 4 ~~imprisonment, or both, at the discretion of the court; and, if still in office, he shall be~~
 5 ~~removed from office."~~

6 **SECTION 4.**

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

10 "45-15-11.

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

16 **SECTION 5.**

17 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared
 18 or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other
 19 sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full
 20 force and effect as if the section, subsection, sentence, clause, or phrase so declared or
 21 adjudged invalid or unconstitutional were not originally a part hereof. The General
 22 Assembly declares that it would have passed the remaining parts of this Act if it had known
 23 that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

24 **SECTION 6.**

25 This Act shall become effective upon approval by the Governor or upon its becoming law
 26 without such approval. Section 3 shall apply only to crimes committed on or after the
 27 effective date of this Act. Section 4 shall apply to crimes committed before, on, and after the
 28 effective date of this Act.

29 **SECTION 7.**

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