

House Bill 367 (AS PASSED HOUSE AND SENATE)

By: Representative Byrd of the 170<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To enact the "Corruption Prevention Act;" to provide a short title; to amend Title 45 of the  
2 Official Code of Georgia Annotated, relating to public officers and employees, so as to  
3 change the procedures relating to the indictment of certain public officials; to provide a  
4 procedure for the suspension of members of local government authorities upon felony  
5 indictment by a grand jury; to provide for reinstatement in certain circumstances; to provide  
6 for removal upon conviction and after exhaustion of appeals; to limit compensation; to  
7 provide for replacement officials; to amend Code Section 17-7-52 of the Official Code of  
8 Georgia Annotated, relating to the procedure for indictment of a peace officer for crime in  
9 performance of duties, so as to include former peace officers; to provide for applicability and  
10 an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

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

14 style="text-align:center">**SECTION 2.**

15 Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees,  
16 is amended by adding a new Code Section 45-5-6.2 to read as follows:

17 "45-5-6.2.

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

19 (1) 'Authority official' means any appointed member of a governing body of a local  
20 authority.

21 (2) 'Local authority' includes without limitation instrumentalities of one or more local  
22 governments created to fulfill a specialized public purpose or any other legally created  
23 organization that has authority to issue debt for a public purpose independent of a county  
24 or municipality. The term does not include state authorities. Such local authorities may  
25 have been created by local constitutional amendment, general statute, or local law.

1 (b) Unless otherwise provided by general law, upon indictment of an authority official for  
2 a felony offense by a grand jury of this state or by the United States, the governing  
3 authority of the county or municipality that appointed the authority official may, by  
4 resolution entered on the minutes of the governing authority, suspend the authority official  
5 from the appointed office immediately and without further action pending the final  
6 disposition of the case or until the expiration of his or her appointed term of office,  
7 whichever occurs first. During the term of the office to which such officer was appointed  
8 and in which the indictment occurred, if a nolle prosequi is entered, if the authority official  
9 is acquitted, or if, after conviction, the conviction is later overturned as a result of any  
10 direct appeal or application for a writ of certiorari, the authority official shall be  
11 immediately reinstated to the office from which he or she was suspended. If the local  
12 authority is a joint authority or regional authority with appointments from more than one  
13 county, municipality, or combination of counties and municipalities, the governing  
14 authority of the county or municipality which was responsible for the appointment shall be  
15 authorized to suspend the indicted authority official.

16 (c) If the suspended authority official is compensated for his or her duties on behalf of the  
17 local authority, the authority official shall continue to receive the compensation from his  
18 or her office until a conviction. After a conviction, the authority official shall not be  
19 entitled to receive the compensation from his or her office. If the authority official is  
20 reinstated to office, he or she shall be entitled to receive any compensation withheld under  
21 the provisions of this Code section. For the purpose of this Code section, a plea of nolo  
22 contendere shall be considered a conviction.

23 (d) For the duration of any suspension of any authority official under this Code section,  
24 a replacement official for the authority official suspended shall be appointed as provided  
25 for in any general law, local law, ordinance, or resolution governing the filling of a  
26 temporary vacancy in the public office affected. If no such general law, local law,  
27 ordinance, or resolution governing the filling of a temporary vacancy is applicable, then  
28 the governing authority of the county or city responsible for the initial appointment shall  
29 appoint a replacement officer for the authority official suspended. Upon final conviction  
30 and after exhaustion of all appeals, if any, the office of the authority official shall be  
31 vacated immediately without further action. Said vacancy shall be filled by the  
32 replacement official appointed pursuant to this subsection for the balance of the appointed  
33 term of the convicted authority official."

### 34 SECTION 3.

35 Said title is further amended by striking Code Section 45-11-4, relating to malpractice,  
36 partiality, neglect of duties, conduct unbecoming office, or demanding more cost than that

1 to which entitled, and inserting in lieu thereof a new Code Section 45-11-4 to read as  
2 follows:

3 "45-11-4.

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

5 (1) 'County officer' shall mean any elected county officer, including the judge of the  
6 probate court, clerk of the superior court, tax receiver, tax collector, and tax  
7 commissioner where such office has replaced the tax receiver and tax collector, and any  
8 county commissioner.

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

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

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

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

20 (2) Using using oppression or tyrannical partiality in the administration or under the  
21 color of his or her office; or;

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

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

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

31 (c) A conviction for violating subsection (b) of this Code section shall be punished as for  
32 a misdemeanor and, upon conviction in a court of competent jurisdiction, the accused shall  
33 be removed from office.

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

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

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

7 (g) The accused shall have the right to appear before the grand jury to make such sworn  
 8 statement as he or she shall desire at the conclusion of the presentation of the state's  
 9 evidence. The accused shall not be subject to examination, either direct or cross, and shall  
 10 not have the right individually or through his or her counsel to examine the state's  
 11 witnesses. The accused and his or her counsel shall have the right to be present during the  
 12 presentation of all evidence and alleged statements of the accused on the proposed  
 13 indictment, presentment, or accusation, after which ~~he~~ the accused and his or her counsel  
 14 shall retire instanter from the grand jury room to permit the grand jury to deliberate upon  
 15 the indictment.

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

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

#### 26 SECTION 4.

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

30 "45-15-11.

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

**SECTION 5.**

Code Section 17-7-52 of the Official Code of Georgia Annotated, relating to the procedure for indictment of a peace officer for crime in performance of duties, is amended by striking subsection (a) and inserting in lieu thereof the following:

"(a) Before an indictment against a present or former peace officer charging the officer with a crime which is alleged to have occurred while he or she was in the performance of his or her duties is returned by a grand jury, the officer shall be notified of the contemplated action by the district attorney of the county wherein the grand jury shall convene and the officer shall be afforded the rights provided in Code Section 45-11-4."

**SECTION 6.**

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

(b) The provisions of Section 2 of this Act shall not apply to any indictment handed down prior to the effective date of this Act.

(c) The provisions of Section 5 of this Act shall apply only to crimes committed on or after the effective date of this Act.

(d) The provisions of Sections 3 and 4 of this Act shall apply to crimes committed before, on, and after the effective date of this Act.

**SECTION 7.**

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