

The House Committee on Judiciary Non-civil offers the following substitute to HB 1162:

A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 8 of Title 50 of the Official Code of Georgia Annotated, relating to general provisions concerning the Department of Community Affairs, so as to require the Department of Community Affairs to investigate and refer for prosecution cases of Section 8 housing fraud and abuse; to provide for administrative and civil remedies; to provide for pretrial diversion under certain circumstances for persons accused of Section 8 fraud or abuse; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 8 of Title 50 of the Official Code of Georgia Annotated, relating to general provisions concerning the Department of Community Affairs, is amended by adding a new Code Section 50-8-3.1 to read as follows:

"50-8-3.1.

(a) The department shall have the power and duty to investigate fraud and abuse in the federal Section 8 Housing Choice Voucher Program administered by the department pursuant to 42 U.S.C. Section 1437, et seq.

(b) When cases of criminal fraud or abuse are discovered or detected, the department shall refer such cases where warranted to the district attorney of the county in which the fraud or abuse occurred for prosecution. Such cases shall be prosecuted as violations of Code Section 16-8-3, relating to theft by deception; Code Section 16-10-20, relating to making false statements or writings; Code Section 16-10-71, relating to false swearing; or any other such criminal provision as the district attorney may deem appropriate under the facts and circumstances of the case.

(c) When a case of fraud or abuse is discovered or detected that is not criminal in nature or when a prosecutor declines to prosecute a case referred by the department under this Code section, the department shall have the authority to settle such case on such terms and

H. B. 1162 (SUB)

1 conditions as the department finds suitable under the facts and circumstances of the case.
2 In addition, the department shall be authorized to initiate and prosecute civil actions to
3 recoup overpayments or improper payments. The department shall also have the authority
4 to settle such civil cases on such terms and conditions as the department finds suitable
5 under the facts and circumstances of the cases.

6 (d)(1) Prior to the filing of an accusation or the return of an indictment alleging fraud or
7 abuse in the federal Section 8 Housing Choice Voucher Program administered by the
8 department, a prosecuting attorney may defer further prosecution of such accusation or
9 indictment and shall have the authority to enter into a consent agreement with the
10 individual in which such individual admits to any overpayment, consents to
11 disqualification for such period of time as is or may hereafter be provided by law or by
12 the rules and regulations of the department, and agrees to repay, as restitution, such
13 overpayment. Such agreement may provide for a lump sum repayment, installment
14 payments, formula reduction of benefits, or any combination thereof. Such agreement
15 shall toll the running of the statute of limitations for such offense for the period of the
16 agreement. Prior to entering into such consent agreement with an individual, the
17 prosecuting attorney or his or her designee shall advise such person that he or she may
18 consult with an attorney prior to signing such consent agreement. If the individual so
19 requests, he or she shall be afforded a reasonable amount of time, not to exceed 15 days,
20 to engage or consult an attorney. A consent agreement entered into in accordance with
21 this subsection shall not constitute a criminal charge.

22 (2) Any such agreement shall be filed in the criminal docket of the court having
23 jurisdiction over the violation without the necessity of the state filing an accusation or an
24 indictment being returned by a grand jury. The clerk shall enter upon the docket
25 'CONSENT AGREEMENT NOT A CRIMINAL CHARGE.'

26 (3) Upon successful completion of the terms and conditions of the consent agreement,
27 criminal prosecution of the individual for such offense shall be barred; provided,
28 however, that nothing in this paragraph shall prohibit the state from introducing evidence
29 of such offense as a similar transaction in any subsequent prosecution or for the purpose
30 of impeachment. The successful completion of the terms and conditions of the agreement
31 shall not be considered a criminal conviction.

32 (4) If the individual fails to comply with the terms of such consent agreement, the state
33 may proceed with a criminal prosecution."

34 **SECTION 2.**

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

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- SECTION 3.
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- All laws and parts of laws in conflict with this Act are repealed.