

Senate Bill 537

By: Senator Rogers of the 21st

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 12 of Title 45 of the Official Code of Georgia Annotated, relating to
2 public officers and employees, so as to establish the Office of State Inspector General; to
3 provide for definitions; to provide for duties; to provide certain powers; to provide
4 procedures for the application of the duties and powers of such office; to provide a duty to
5 report certain actions; to provide for records; to provide for procedures regarding such
6 records; to provide for an automatic repeal; to provide for related matters; to repeal
7 conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Chapter 12 of Title 45 of the Official Code of Georgia Annotated, relating to public officers
11 and employees, is amended by adding a new article to read as follows:

12 **"ARTICLE 7**

13 **"45-12-210.**

14 There is created the Office of State Inspector General, whose purpose shall be to
15 investigate the management and operation of state agencies. The Governor shall appoint
16 an inspector general who shall have jurisdiction over all officers and employees of
17 executive branch agencies and vendors and others persons doing business with the
18 executive branch of Georgia. The inspector general shall be appointed by and serve at the
19 pleasure of the Governor for a term of four years, which may be renewed at the discretion
20 of the Governor. The inspector general shall be selected without regard to political
21 affiliation and on the basis of integrity, capability for strong leadership, and knowledge of
22 accounting, auditing, financial analysis, law, management analysis, public administration,
23 investigation, or criminal justice administration or other closely related fields.

1 45-12-211.

2 As used in this article, the term:

3 (1) 'Abuse' means the intentional, wrongful, or improper use or destruction of state
4 resources, or seriously improper practice that does not involve prosecutable fraud.

5 (2) 'Corruption' means an intentional act of fraud, waste, or abuse or the use of public
6 office for personal, pecuniary gain for oneself or another.

7 (3) 'Fraud' means an act of intentional or reckless deceit to mislead or deceive.

8 (4) 'Inspector general' means the inspector general or his or her designee.

9 (5) 'Office' means the Office of State Inspector General.

10 (6) 'State agency' means any agency in the executive branch of Georgia. It shall include
11 all departments, agencies, boards, and commissions under the authority of the Governor.

12 (7) 'Vendor' means any person doing business with a state agency in an amount that
13 exceeds \$50,000.00 in a fiscal year.

14 (8) 'Waste' means a reckless or grossly negligent act that causes state funds to be spent
15 in a manner that was not authorized or represents significant inefficiency and needless
16 expense.

17 45-12-212.

18 The inspector general shall have the following duties:

19 (1) Investigate the management and operation of state agencies on his or her own
20 initiative, in order to determine whether waste, fraud, abuse, and corruption have been
21 committed or are being committed by state officers or state employees;

22 (2) Receive complaints alleging waste, fraud, abuse, and corruption, and determine
23 whether the information contained in those complaints alleges facts that give reasonable
24 cause to investigate, and, if so, determine if there is a reasonable cause to believe that
25 waste, fraud, abuse, or corruption has been committed or is being committed by a state
26 officer or state employee. An investigation may not be initiated more than one year after
27 the most recent act of waste, fraud, abuse, or corruption or series of alleged acts of waste,
28 fraud, abuse, or corruption except where there is reasonable cause to believe that
29 fraudulent concealment has occurred. To constitute fraudulent concealment sufficient to
30 toll this limitation period, there must be an affirmative act or representation calculated to
31 prevent discovery of the fact that a violation has occurred;

32 (3) Except as otherwise provided in this Code section, the inspector general shall report
33 suspected acts of waste, fraud, abuse, or corruption that were or are being committed by
34 state officers or state employees to the Governor, and where appropriate, to the
35 responsive state or federal prosecuting authority with jurisdiction over the matter if there
36 is reasonable cause to believe that a crime has occurred or is occurring. In addition, the

1 inspector general shall report acts of waste, fraud, abuse, or corruption, as appropriate
2 under the circumstances, to the State Ethics Commission, the appropriate licensing
3 agency for possible disciplinary action, or the person's employer or direct report for
4 possible disciplinary action. The inspector general shall have no duty to report acts of
5 waste, fraud, abuse, or corruption to a person pursuant to this Code section if such person
6 allegedly committed or is committing the act of waste, fraud, abuse, and corruption;

7 (4) Except as otherwise provided in this Code section, the inspector general shall report
8 suspected acts of waste, fraud, abuse, or corruption arising out of any investigation of a
9 state agency, state officer, or state employee, that were or are being committed by persons
10 who are not state officers or state employees to the Governor, and to the appropriate state
11 or federal prosecuting authority with jurisdiction over the matter if there is reasonable
12 cause to believe that a crime has occurred or is occurring;

13 (5) The inspector general shall have the authority to investigate those cases where action
14 has been taken against a public employee for having cooperated with the office. The
15 inspector general shall report such actions to the Governor in the form of a detailed report
16 identifying the public employee and the action taken against the public employee;

17 (6) Upon conclusion of an investigation by the inspector general, he or she shall issue
18 a report. The report shall be filed with the Governor, and may be filed with the head of
19 each department or agency affected by or involved in the investigation. The report shall
20 include the following:

21 (A) The basis for the investigation;

22 (B) The actions taken in furtherance of the investigation;

23 (C) Whether the investigation revealed that there was reasonable cause to believe that
24 an act of waste, fraud, abuse, or corruption has occurred; and

25 (D) If an act of waste, fraud, abuse, or corruption was identified during the
26 investigation, the inspector general shall identify the person who committed the act,
27 describe the act, explain how it was detected, and indicate to whom it was reported;

28 (7) Identify other state agencies that are also responsible for investigating, auditing,
29 reviewing, or evaluating the management and operation of state agencies and negotiate
30 and enter into agreements with these agencies to share information to avoid duplication
31 of effort;

32 (8) Consult with state agencies and advise them in developing, implementing, and
33 enforcing policies and procedures that will prevent or reduce the risk of waste, fraud,
34 abuse, and corruption by their state officers or state employees;

35 (9) After detecting waste, fraud, abuse, or corruption, review and evaluate the relevant
36 policies and procedures of the state agency in which the act occurred, and advise the state

1 agency as to any changes that should be made in its policies and procedures so as to
2 prevent recurrences of similar acts of waste, fraud, abuse, and corruption;

3 (10) Develop and promulgate rules and regulations necessary for the implementation of
4 this article;

5 (11) Develop a manual of investigative techniques. The office shall also conduct studies
6 of techniques of investigating and detecting, and of preventing or reducing the risk of,
7 waste, fraud, abuse, and corruption by state officers and employees; and

8 (12) Close an investigation when the inspector general concludes there is insufficient
9 evidence that a violation has occurred. Closure by the inspector general does not bar the
10 inspector general from resuming the investigation if circumstances warrant.

11 45-12-213.

12 (a) It is the duty of every state officer and state employee under the jurisdiction of the
13 office to cooperate with the inspector general in any investigation undertaken pursuant to
14 this article. Each state agency shall make its premises, equipment, personnel, books,
15 records, and papers reasonably available to the inspector general.

16 (b) The inspector general shall be authorized to enter upon the premises of any state
17 agency at any time, without prior announcement, if necessary for the successful completion
18 of an investigation. In the course of an investigation, the inspector general shall be
19 authorized to question any state officer or state employee serving in, and other person
20 transacting business with, the state agency, and may inspect and copy any books, records,
21 or papers in the possession of the state agency, taking care to preserve the confidentiality
22 of information contained in responses to questions or the books, records, or papers that is
23 made confidential by law.

24 (c) In performing any investigation, the inspector general shall avoid interfering with the
25 ongoing operations of the state agency being investigated; provided, however, that such
26 interference is not reasonably necessary for the successful completion of the investigation.

27 (d) Other state agencies who are also responsible for investigating, auditing, reviewing,
28 or evaluating the management and operation of state agencies shall negotiate and enter into
29 agreements with the office for the purpose of sharing information and avoiding duplication
30 of effort.

31 (e) Failure to cooperate with an investigation of the office is grounds for disciplinary
32 action, including dismissal. Nothing in this Code section limits or alters a person's existing
33 rights or protections under state or federal law.

34 (f) If the inspector general determines that any alleged misconduct involves any person not
35 subject to the jurisdiction of the office, the inspector general shall refer the reported
36 allegations to the appropriate body. If the inspector general determines that any alleged

1 misconduct may give rise to criminal penalties, the inspector general may refer the
2 allegations regarding the misconduct to the appropriate law enforcement authority.

3 45-12-214.

4 (a) Any person who knows or has reasonable cause to believe that a state officer or state
5 employee has committed, or is in the process of committing, an act of waste, fraud, abuse,
6 or corruption shall prepare and file with the office a complaint that identifies the person
7 making the report and the state officer or state employee who allegedly committed or is
8 committing the act, describes the act, and explains with specificity how the person
9 reporting knew or had reasonable cause to believe that the state officer or state employee
10 committed or is in the process of committing the act of waste, fraud, abuse, or corruption.
11 The preparation and filing of the complaint described in this Code section is in addition to
12 any other report that the person is required by law to make.

13 (b) The inspector general shall prescribe a form for complaints authorized pursuant to this
14 Code section. The inspector general shall provide a blank copy of the form to the person,
15 free of charge. No complaint is defective, however, because it is not made on the form
16 prescribed by the inspector general.

17 (c) Any employee who knowingly files a false complaint or files a complaint with reckless
18 disregard for the truth or the falsity of the facts underlying the complaint may be subject
19 to disciplinary action.

20 45-12-215.

21 (a) In performing any investigation, the inspector general shall be authorized to administer
22 oaths, examine witnesses under oath, and issue any subpoenas necessary to compel the
23 attendance of witnesses and the production of all books, records, papers, and tangible
24 items.

25 (b) The inspector general shall issue subpoenas only if:

26 (1) An investigation authorized pursuant to this article is being conducted;

27 (2) The investigation relates to misconduct within the programs and operation of state
28 agencies;

29 (3) The inspector general has a reasonable belief that such misconduct has occurred; and

30 (4) The testimony of the witness or the documents or items sought by the subpoena are
31 relevant to the investigation.

32 (c) A person duly subpoenaed for testimony, documents, and other items who neglects or
33 refuses to testify or produce documents or other items under the requirements of the
34 subpoena shall be subject to punishment as may be determined by a court of competent

1 jurisdiction. Nothing in this Code section limits or alters a person's existing rights or
2 protections under state or federal law.

3 45-12-216.

4 (a) Except as otherwise provided in this Code section, the report of any completed
5 investigation conducted by the inspector general is a public record, open to public
6 inspection. Records pertaining to open investigations are considered confidential and not
7 subject to public release. The inspector general, or a deputy inspector with the written
8 approval of the inspector general, may designate all or part of a report as confidential if
9 doing so preserves the confidentiality of matters made confidential by law or appears
10 reasonably necessary to protect the safety of witnesses or to avoid disclosure of
11 investigative techniques that, if disclosed, would enable persons who have been or are
12 committing an act of waste, fraud, abuse, or corruption to avoid detection. Confidential
13 material shall be marked clearly as being confidential.

14 (b) The inspector general shall provide a copy of each report of a completed investigation,
15 including wholly and partially confidential reports, to the Governor, the Speaker of the
16 House of Representatives, and the President of the Senate. In addition, the inspector
17 general shall provide a copy of the report of any investigation to a prosecuting authority
18 who may undertake criminal prosecution of an act of waste, fraud, abuse, and corruption
19 and licensing agency, appointing authority, or a public employer that may take disciplinary
20 action with regard to an act of waste, fraud, abuse, or corruption. The inspector general
21 shall not provide a copy of any confidential part of the report of an investigation to a person
22 if that person allegedly committed the act as described in the report. The Governor, the
23 Speaker of the House of Representatives, the President of the Senate, a prosecuting
24 authority, the State Ethics Commission, licensing agency, appointing authority, or public
25 employer that receives a report, all or part of which is designated as confidential, shall take
26 all appropriate measures necessary to preserve the confidentiality of the report.

27 (c) The inspector general shall provide a copy of any nonconfidential parts of any report
28 to any other person who requests the copy and pays a fee prescribed by the inspector
29 general. The fee charged shall be as set pursuant to Code Section 50-18-71.

30 45-12-217.

31 (a) The inspector general shall be authorized to receive and investigate complaints or
32 information from any public employee concerning the possible existence of any activity
33 constituting waste, fraud, abuse, and corruption in or relating to any state programs or
34 operations under the jurisdiction of the executive branch.

1 (b) No agency, officer, or employer shall take action against a public employee or public
2 officer for disclosing or threatening to disclose the existence of any activity constituting
3 waste, fraud, abuse, and corruption to the inspector general, unless the disclosure or
4 threatened disclosure was made with knowledge that the disclosure was knowingly false
5 or with willful disregard for its truth or falsity.

6 (c) The inspector general shall not, after receipt of a complaint or information from a
7 public employee, disclose the identity of the employee without the consent of the
8 employee, unless the inspector general determines such disclosure is unavoidable during
9 the course of the investigation.

10 45-12-218.

11 (a) Every state officer or employee in a state agency shall report promptly to the inspector
12 general any information concerning waste, corruption, fraud, or abuse by another state
13 officer or employee relating to his or her office or employment, or by a person having
14 business dealings with a state agency relating to those dealings.

15 (b) The knowing failure of any officer or employee to report as required above or the
16 knowing provision of false information shall be cause for discipline up to and including
17 discharge. Any officer or employee who acts in good faith pursuant to this Code section
18 by reporting to the inspector general improper governmental action shall not be subject to
19 dismissal, discipline, or other adverse personnel action.

20 45-12-219.

21 This article shall stand repealed on July 1, 2011."

22 **SECTION 2.**

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