

The House Committee on Judiciary offers the following substitute to SB 537:

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 amend Code Section 50-18-72 of the Official Code of Georgia
6 Annotated, relating to when public disclosure is not required, so as to protect certain records
7 of the Office of State Inspector General from public disclosure; to provide for an automatic
8 repeal; to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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:

"ARTICLE 7

14 45-12-210.

15 As used in this article, the term:

- 16 (1) 'Abuse' means the intentional, wrongful, or improper use or destruction of state
17 resources, or seriously improper practice that does not involve prosecutable fraud.
18 (2) 'Corruption' means an intentional act of fraud, waste, or abuse or the use of public
19 office for personal, pecuniary gain for oneself or another.
20 (3) 'Employee' means any employee of a state agency.
21 (4) 'Fraud' means an act of intentional or reckless deceit to mislead or deceive.
22 (5) 'Inspector general' means the inspector general or his or her designee.
23 (6) 'Office' means the Office of State Inspector General.

- 1 (7) 'Officer' means any person appointed to a state agency.
- 2 (8) 'Official' means any person elected to state office who is the head of a state agency.
- 3 (9) 'State agency' means any agency in the executive branch of Georgia and shall
4 include all departments, agencies, boards, and commissions under the authority of the
5 Governor.
- 6 (10) 'Vendor' means any person doing business with a state agency in an amount that
7 exceeds \$50,000.00 in a fiscal year.
- 8 (11) 'Waste' means a reckless or grossly negligent act that causes state funds to be spent
9 in a manner that was not authorized or represents significant inefficiency and needless
10 expense.

11 45-12-211.

12 (a) There is created the Office of State Inspector General, whose purpose shall be to
13 investigate the management and operation of state agencies. The office shall be assigned
14 to the Office of Planning and Budget for administrative purposes only, as described in
15 Code Section 50-4-3.

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

25 45-12-212.

26 The inspector general shall have the following duties:

- 27 (1) Investigate the management and operation of state agencies on his or her own
28 initiative, in order to determine whether waste, fraud, abuse, and corruption have been
29 committed or are being committed by officials, officers, or employees;
- 30 (2) Receive complaints alleging waste, fraud, abuse, and corruption, and determine
31 whether the information contained in those complaints alleges facts that give reasonable
32 cause to investigate, and, if so, determine if there is a reasonable cause to believe that
33 waste, fraud, abuse, or corruption has been committed or is being committed by an
34 official, officer, or employee. An investigation may not be initiated more than one year
35 after the most recent act of waste, fraud, abuse, or corruption or series of alleged acts of

1 waste, fraud, abuse, or corruption except where there is reasonable cause to believe that
2 fraudulent concealment has occurred. To constitute fraudulent concealment sufficient to
3 toll this limitation period, there shall be an affirmative act or representation calculated to
4 prevent discovery of the fact that a violation has occurred;

5 (3) Except as otherwise provided in this Code section, the inspector general shall report
6 suspected acts of waste, fraud, abuse, or corruption that were or are being committed by
7 officials, officers, or employees to the Governor, and where appropriate, to the responsive
8 state or federal prosecuting authority with jurisdiction over the matter if there is
9 reasonable cause to believe that a crime has occurred or is occurring. In addition, the
10 inspector general shall report acts of waste, fraud, abuse, or corruption, as appropriate
11 under the circumstances, to the State Ethics Commission, the appropriate licensing state
12 agency for possible disciplinary action, or the person's employer or direct report for
13 possible disciplinary action. The inspector general shall have no duty to report acts of
14 waste, fraud, abuse, or corruption to a person pursuant to this Code section if such person
15 allegedly committed or is committing the act of waste, fraud, abuse, and corruption;

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

22 (5) The inspector general shall have the authority to investigate those cases where action
23 has been taken against an officer or employee for having cooperated with the office. The
24 inspector general shall report such actions to the Governor in the form of a detailed report
25 identifying the officer or employee and the action taken against the officer or employee;

26 (6) Upon conclusion of an investigation by the inspector general, he or she shall issue
27 a report. The report shall be filed with the Governor, and may be filed with the head of
28 each state agency affected by or involved in the investigation. The report shall include
29 the following:

30 (A) The basis for the investigation;

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

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

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

1 (7) Identify other state agencies that are also responsible for investigating, auditing,
2 reviewing, or evaluating the management and operation of state agencies and negotiate
3 and enter into agreements with such state agencies to share information to avoid
4 duplication of effort;

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

8 (9) After detecting waste, fraud, abuse, or corruption, review and evaluate the relevant
9 policies and procedures of the state agency in which the act occurred, and advise the state
10 agency as to any changes that should be made in its policies and procedures so as to
11 prevent recurrences of similar acts of waste, fraud, abuse, and corruption;

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

14 (11) Develop a manual of investigative techniques; and

15 (12) Close an investigation when the inspector general concludes there is insufficient
16 evidence that a violation has occurred. Closure by the inspector general shall not bar the
17 inspector general from resuming the investigation if circumstances warrant.

18 45-12-213.

19 (a) It shall be the duty of every official, officer, and employee under the jurisdiction of the
20 office to cooperate with the inspector general in any investigation undertaken pursuant to
21 this article. Each state agency shall make its premises, equipment, personnel, books,
22 records, and papers reasonably available to the inspector general.

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

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

34 (d) Other state agencies who are also responsible for investigating, auditing, reviewing,
35 or evaluating the management and operation of state agencies shall negotiate and enter into

1 agreements with the office for the purpose of sharing information and avoiding duplication
2 of effort.

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

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

9 45-12-214.

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

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

23 (c) Any officer or employee who knowingly files a false complaint or files a complaint
24 with reckless disregard for the truth or the falsity of the facts underlying the complaint may
25 be subject to disciplinary action by the officer or employee's respective state agency.

26 45-12-215.

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

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

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

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

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

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

3 (c) A person duly subpoenaed for testimony, documents, and other items who neglects or
4 refuses to testify or produce documents or other items under the requirements of the
5 subpoena shall be subject to punishment as may be determined by a court of competent
6 jurisdiction. Nothing in this Code section limits or alters a person's existing rights or
7 protections under state or federal law.

8 45-12-216.

9 The office shall conduct studies of techniques of investigating and detecting, and of
10 preventing or reducing the risk of, waste, fraud, abuse, and corruption by officials, officers,
11 and employees.

12 45-12-217.

13 (a) The inspector general shall be authorized to receive and investigate complaints or
14 information from any official, officer, or employee concerning the possible existence of
15 any activity constituting waste, fraud, abuse, and corruption in or relating to any state
16 programs or operations under the jurisdiction of the executive branch.

17 (b) No state agency, officer, or employer shall take action against an official, officer, or
18 employee for disclosing or threatening to disclose the existence of any activity constituting
19 waste, fraud, abuse, and corruption to the inspector general, unless the disclosure or
20 threatened disclosure was made with knowledge that the disclosure was knowingly false
21 or with willful disregard for its truth or falsity.

22 (c) The inspector general shall not, after receipt of a complaint or information from an
23 official, officer, or employee, disclose the identity of such official, officer, or employee
24 without the consent of such official, officer, or employee, unless the inspector general
25 determines such disclosure is unavoidable during the course of the investigation.

26 45-12-218.

27 (a) Every official, officer, or employee shall report promptly to the inspector general any
28 information concerning waste, corruption, fraud, or abuse by another official, officer, or
29 employee relating to his or her office or employment, or by a person having business
30 dealings with a state agency relating to those dealings.

31 (b) The knowing failure of any official, officer, or employee to report information as
32 required in subsection (a) of this Code section or the knowing provision of false
33 information shall be cause for discipline up to and including discharge. Any official,
34 officer, or employee who acts in good faith pursuant to this Code section by reporting to

1 the inspector general improper governmental action shall not be subject to dismissal,
2 discipline, or other adverse personnel action.

3 45-12-219.

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

5 **SECTION 2.**

6 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public
7 disclosure is not required, is amended by revising paragraph (4) of subsection (a) as follows:

8 "(4) Records of law enforcement, prosecution, the Office of State Inspector General, or
9 regulatory agencies in any pending investigation or prosecution of criminal or unlawful
10 activity, other than initial police arrest reports and initial incident reports; provided,
11 however, that an investigation or prosecution shall no longer be deemed to be pending
12 when all direct litigation involving said investigation and prosecution has become final
13 or otherwise terminated;"

14 **SECTION 3.**

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