

Complaint to the Joint Legislative Ethics Committee
Larry O'Neal and HB 488

Filed By
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Dear Sirs:

I hereby file a complaint against the Honorable Lawrence E. "Larry" O'Neal, the Representative from House District 146. As detailed below, Rep. O'Neal has violated provisions of the ethics laws governing the conduct of Members of the Georgia General Assembly

Description of violations

Rep. O'Neal, who currently serves as Chairman of the House Ways and Means Committee, describes himself as "very clever tax lawyer" who knows how to "take advantage of the vulnerabilities of the tax code."¹ Rep. O'Neal has publicly admitted to doing legal work on behalf of Governor George Perdue III, a.k.a. Sonny Perdue.² As the Governor's personal attorney, Rep. O'Neal has created several companies on the Governor's behalf, including Maryson LLC³ and Perdue Plantation LLC⁴. Mr. O'Neal has also acted as legal counsel for the Governor's shell company, Maryson, which was used to purchase 101.25 acres in Houston County, Georgia next to the planned Oaky Woods development in Houston County.⁵

Larry O'Neal is also the author of HB 488 (2005),⁶ and is the individual responsible for making the necessary provisions retroactive so Governor Perdue could avoid paying over \$100,000 in taxes to the state of Georgia.

An amendment requested by Rep. O'Neal to HB 488 provided a direct and specific state income tax benefit to Governor Perdue, who has been, as stated above, a client of Rep. O'Neal's private law practice. By changing the effective date of certain provisions of the HB 488, specifically Sections 9 and 14 relating to the allowance of a deferral of state capital gains taxes on Georgia property exchanged for out-of-state property, Rep. O'Neal

¹ O'Neal speaking on the floor of the House in regards to HB 191 on 2/8/2005 (1:14:39 into GBP video)

² Barnwell, "O'Neal: Perdue did not know about undisclosed company," *Macon Telegraph*, 10/1/2006

³ <http://corp.sos.state.ga.us/corp/soskb/Corp.asp?216855>

⁴ <http://corp.sos.state.ga.us/corp/soskb/Corp.asp?218486>

⁵ See Attachment A for deed of sale.

⁶ http://www.legis.ga.gov/legis/2005_06/sum/hb488.htm

used his position as a Member of the House to bestow a financial benefit upon a client of his private law practice.

Prior to the enactment of HB 488, any person selling Georgia property who wished to defer state capital gains taxes by completing a “like kind exchange” was required to purchase property in Georgia. HB 488 removed that restriction, allowing out-of-state property to be used for a “like kind” exchange to defer payment of state capital gains taxes.

When Rep. O’Neal originally introduced HB 488, all effective dates in the bill were January 1, 2005 or later. The amendment that Rep. O’Neal asked the Senate Finance Committee to make changed the effective date of only the provisions regarding “like kind” exchanges, making the effective dates of those provisions January 1, 2004. With that change, Rep. O’Neal ensured that the repeal of the in-state purchase requirement benefited his client, Governor Perdue, who had sold Georgia land and purchased Florida land in 2004. This change in the law allowed Rep. O’Neal’s client, Governor Perdue, to indefinitely defer the payment of over \$100,000 in state capital gains taxes on the sale of the Georgia land.⁷ The Georgia Department of Revenue only knows of one person who benefited from the amendment: Governor Perdue.⁸

By requesting this change to the bill and then voting on it, Rep. O’Neal put the fiduciary interest of his client, Governor Perdue, above those of the state of Georgia. This is a clear violation of O.C.G.A. §45-10-1 (I and V) and possibly also a violation of O.C.G.A. §45-10-1 (VIII and IX), all of which fall under the jurisdiction of the Joint Legislative Ethics Committee. The Committee is required to “to conduct an investigation of the merits of a written complaint by any person who believes that a violation of this part has occurred.” O.C.G.A. § 45-10-93(b)(6)(A).

Further, Rep. O’Neal has claimed that he would relish the opportunity to explain why he requested the change, and thereby exonerate himself and Governor Perdue of wrongdoing. As he told the Macon Telegraph, “I would tell you: Hook me up to a polygraph...”⁹ While I don’t know if the Committee has the equipment to fulfill Mr. O’Neal’s request, I’m sure he would be willing to settle for publicly testifying under oath alongside his client, Governor George Perdue.

Statement of Facts-

Perdue Sells Instate Land and Buys Florida Land in 1031 Exchange

Gov. Perdue and his sister sold 280.23 acres of land for \$4,419,781 to the Stoker Group on 6/22/2004.¹⁰ When the land was inherited it was worth \$1,044,200,¹¹ which meant

⁷ Salzer, “3 minutes, 1 tax bill, \$100,000 for Perdue,” *AJC*, 10/1/2006

⁸ Salzer, “3 minutes, 1 tax bill, \$100,000 for Perdue,” *AJC*, 10/1/2006

⁹ Barnwell, “O’Neal defends tax code change,” *Macon Telegraph*, 10/1/2006

¹⁰ http://64.234.218.46/cgi-bin/ga_houston_display.cgi?KEY=001250%20%20%2020032000 Houston Co. Tax assessor

Perdue and his sister had capital gains of \$3,375,581. Perdue was entitled to half of the capital gains (in addition to half of the inherited value which was not taxed), or \$1,687,790.50. Perdue was therefore responsible for capital gains tax on both the federal and state level. His state burden, taxed like general income at 6%,¹² would have been \$101,267.07.

Perdue sought to avoid federal taxes so he decided to reinvest his half in land in Florida through a 1031 exchange.¹³ Under the exchange Perdue could defer his capital gains tax if he purchased “like-kind” property within 180 days of the sale from which the gains came.¹⁴ On 12/17/2004, 178 days later, Perdue completed the 1031 exchange by purchasing 19.51 acres of land in Florida for \$2,038,000.¹⁵ This allowed Perdue to avoid paying federal capital gains tax. Under Georgia law at the time however, Perdue was still required to pay Georgia capital gains tax because Georgia Code did not allow tax deferrals on 1031 exchanges where the new “like-kind” land was not purchased in state. Thus Perdue owed the state over \$100,000 in taxes – until his personal lawyer changed Georgia’s law retroactively.

HB 488 and O’Neal

The issue is not just HB 488 itself but the sole amendment made to it which changed the effective date of accepting out of state 1031 exchanges. The amendment made the sections that were relevant to Perdue (9 and 14)¹⁶, and only those two sections, retroactive to 1/1/2004 so that Perdue’s transaction would be covered.

61 days after Perdue completed his out of state 1031 exchange (2/16/2005) Perdue’s lawyer Larry O’Neal introduced a bill that would allow out of state 1031 “like kind” exchanges to be treated like instate 1031 exchanges. The bill passed Larry O’Neal’s committee on 3/4/2005 and passed in the full House a week later on 3/11/2005.¹⁷

Once the bill passed the House it moved to the Senate. The Senate Finance Committee heard testimony from Commissioner Graham and Larry O’Neal about the bill and passed it on 3/17/2005.¹⁸ The bill was then ready to go to the full floor of the Senate for a vote. If that had occurred Governor Perdue would owe the entire \$101,267.07 in capital gains taxes to the state 29 days later. Larry O’Neal made sure that didn’t happen and tried to hide his tracks while doing so.

¹¹ Houston County Tax Assessor’s office tax card

¹² after \$7000, but given his salary as Governor he already had more that \$7000 in income and thus would owe 6% on the entire gain

¹³ Salzer, “Perdue deal has rich potential...” *AJC*, 8/16/2006

¹⁴ Salzer, “Perdue deal has rich potential...” *AJC*, 8/16/2006

¹⁵ See attached Attachment B for property information and Salzer, “Perdue deal has rich potential...” 8/16/2006

¹⁶ 9 and 15 in the original House bill, 9 made individuals exempt and 15 made corporations exempt

¹⁷ http://www.legis.ga.gov/legis/2005_06/sum/hb488.htm

¹⁸ http://www.legis.ga.gov/legis/2005_06/sum/hb488.htm

The original version coming out of the Senate Finance Committee would not have covered Perdue because the effective date of these two sections would be the date the Governor signed it.¹⁹ Perdue had completed his transaction on 12/17/2004.

The original bill never made it to the floor of the Senate; instead it went back to the Senate Finance Committee. For the bill to go back to the Senate Finance Committee after it had already been passed, a Senate Rules Committee member had to make a motion to send it back. Sen. Mitch Seabaugh (R-Sharpsburg) was the member who did so and when asked as to why he did he responded "I can't remember a thing about it."²⁰

Someone asked that the bill be sent back to committee so that it could be amended.

Larry O'Neal has publicly stated that he does not know who initiated the change.²¹ According to the current Lt. Governor of Georgia and the current Georgia Department of Revenue Commissioner, however, the Honorable Larry O'Neal is responsible for the change.

Casey Cagle, then chairman of the Senate Finance Committee, offered several explanations as to who made the change. Each explanation took one step further until he finally named the culprit.

8/19/2006- "Senate Finance Committee Chairman Casey Cagle (R-Gainesville) said he doesn't remember the details of the bill or who inserted the provision making the law applicable to sales after Jan. 1, 2004."²²

8/31/2006- "Cagle, who has since become the Republican candidate for lieutenant governor, said in an interview Tuesday that the Department of Revenue had requested the change making those provisions retroactive."²³

9/7/2006- "Cagle, however, says he had believed the change was requested by Graham and the Revenue Department; he seemed genuinely startled to learn that Graham had nothing to do with it... So if neither Graham nor Cagle initiated the change, who did? It would have taken someone with a lot of influence to get the bill pulled off the Senate floor and amended. *According to minutes of the Senate Finance Committee meeting supplied by Cagle's campaign staff, that someone was state Rep. Larry O'Neal (R-Warner Robins), chief sponsor of HB 488 and chairman of the House Ways and Means Committee.*"²⁴

So when finally pressed, Cagle blames Larry O'Neal. Commissioner Graham, though in a slightly more opaque way, followed Cagle's lead.

¹⁹ http://www.legis.ga.gov/legis/2005_06/versions/hb488_LC_18_4361S_rcs_6.htm (section 28 c and f)

²⁰ Salzer, "3 minutes, 1 tax bill, \$100,000 for Perdue," *AJC*, 10/1/2006

²¹ Barnwell, "O'Neal Defends Tax Code Change," *Macon Telegraph*, 10/1/2006

²² Salzer, "Law Perdue signed in '05 worked to his advantage," *AJC*, 8/19/2006

²³ Bookman, "How Tax Law Saved Perdue \$100,000," *AJC*, 8/31/2006

²⁴ Bookman, "Questions surround Perdue's property tax break," *AJC*, 9/7/2006

8/31/2006- "I was just informed that the bill was going to change,' Graham told me, stressing that he neither opposed nor requested the change."²⁵

9/7/2006- "According to Bart Graham, head of the Department of Revenue, he had been informed about that particular change --- not consulted, but informed. When I asked him who had told him about the change, Graham would say only that it was '*a member of the [House] Ways and Means Committee.*'"²⁶

The official record backs up Cagle and Graham's claim. According to the Journals of the Senate Finance and press reports, it was on March 22, 2005, that O'Neal testified about the need for the provisions relating to Perdue to be made retroactive to 2004.²⁷

O'Neal made a concerted effort to hide his involvement in changing the bill. He could have simply authored the change when he originally introduced the bill. Or he could have offered an amendment when the bill came before his committee. Instead he chose to wait until it went to the Senate so that it would not look like he had anything to do with the change. If O'Neal was not doing something he knew to be wrong why did he try to hide his involvement and then lie about it when he was caught?

While it is difficult to accept that a member of the House would actively try to manipulate a bill for his client's gain, try to hide his tracks by making the change in the Senate where he technically has no jurisdiction, and then lie to the public about his involvement, there appears to be no alternative explanation. One would have to argue that Lt. Governor Cagle, Revenue Commissioner Graham, and the Journal of the Senate are all mistaken.

O'Neal's only defense beyond claiming ignorance has been to try to obfuscate his actions by asking the public to see these facts as mere "partisan" charges. I am confident that this committee will not fall victim to O'Neal's attempts at obfuscation.

Perdue's Benefit

Perdue claimed at the debate in Perry, Georgia that "when I first learned of this, my accountant informed me when he was doing my taxes."²⁸ This claim is truly remarkable. The best defense a man who believes he should run the 9th largest state in the nation can come up with is that he was that he was too ignorant to pay attention to the details of legislation he signs. An abdication of sworn duty is not a defense.

However a look at all of the known facts indicates that this claim is also no truer than Larry O'Neal's claims of innocence. Perdue was given notice well before his accountant filed his taxes in October.

²⁵ Bookman, "How Tax Law Saved Perdue \$100,000," *AJC*, 8/31/2006

²⁶ Bookman, "Questions surround Perdue's property tax break," *AJC*, 9/7/2006

²⁷ Barnwell, "O'Neal defends tax code change," *Macon Telegraph* 10/1/2006

²⁸ WMAZ transcript of Gubernatorial debate 10/12/2006

Perdue claims to have not known about the provision that benefited him. Even if Perdue didn't bother to read the bill itself, his claimed ignorance would require a second and truly remarkable step. The Governor would have had to have ignored his own staff's summary of the bill, a summary whose sole purpose was to advise the Governor on the legislation he was signing.

Perdue was provided a summary of the bill, written specifically for him by the Department of Revenue. The summary, dated 4/6/2005, and written by Rebecca Sullivan, states that "Sections 9 and 14 repeal the requirement that certain federal like kind exchanges (those where the replacement property is located outside Georgia) are taxable for Georgia purposes (1031 exchanges)."²⁹ Exactly 110 days prior to this memo Perdue completed exactly that type of exchange.

Perdue's campaign spokesperson has acknowledged that Perdue took advantage of the tax break.³⁰ Perdue signed the bill on Tuesday, 4/12/2005,³¹ and his final estimated tax payment was due 1/15/2005.³²

For his 2004 taxes Perdue filed an extension, making his statement due in October 2005. Perdue's campaign staff has said that since he filed the extension the April 15th deadline was irrelevant to him.³³ This is false. As noted on form IT-303 which is used to file an extension:

NOTE:

THERE IS NO EXTENSION FOR PAYMENT OF TAX. INCOME TAX OR CORPORATE NET WORTH TAX MUST BE PAID BY THE PRESCRIBED DUE DATE TO AVOID THE ASSESSMENT OF LATE PAYMENT PENALTIES AND INTEREST.

Finally it is clear that Perdue knew the implications of the bill on his own tax burden because he rushed to sign it. As the AJC has reported, "Perdue has 40 days after the session to sign bills. He signed HB 488 a day after it was sent to his office and three days before the April 15 tax deadline."³⁴

Perdue signed 11 bills on the same day that he signed HB 488. Only one other of those bills had been sent to the Governor the day before and unlike on HB 488 Perdue has given a reason as to why he signed SB 144 out of order.³⁵ The only reason for Perdue to

²⁹ Salzer, "Perdue had explanation of tax break," *AJC*, 12/18/2006

³⁰ Salzer, "Law Perdue signed in '05 worked to his advantage," *AJC*, 8/19/2006

³¹ http://www.legis.ga.gov/legis/2005_06/sum/hb488.htm

³² IT511-2004 Page 15

³³ Salzer, "3 minutes, 1 tax bill, \$100,000 for Perdue," *AJC*, 10/1/2006

³⁴ Salzer, "3 minutes, 1 tax bill, \$100,000 for Perdue," *AJC*, 10/1/2006

³⁵ SB 144 was a piece of legislation Perdue claimed as his own and which he publicly signed after a tour in Americus, Georgia. The legislation, titled "Entrepreneur and Small Business Growth Initiative" was part of a rural economic legislation push Governor Perdue was trumpeting on the 12th as indicated by his [press release](#). SB 144, HB 203, and HB 487 were all mentioned as being part of that initiative, HB 488 was not.

rush to sign HB 488 was because a failure to do so would have resulted in a \$101,267.07 increase in his state taxes.

Bill	Sent to Gov
HB 488	4/11/2005
SB 144	4/11/2005
HB 116	4/5/2005
HB 203	4/4/2005
HB 275	4/4/2005
HB 282	4/6/2005
HB 312	4/7/2005
HB 416	4/5/2005
HB 487	4/6/2005
HB 852	4/4/2005
SB 158	4/8/2005

The “But All Georgian’s Benefit” defense

Isn’t a change in the tax code available to all Georgians? Gov. Perdue made this point at the debate in Perry and O’Neal has made it on several occasions but is simply false.

If a law were passed today that said someone who bought a red 1968 Corvette between January and April of last year didn’t have to pay taxes on it after all, would all Georgians benefit from that change? Instead of a corvette Perdue bought land in Florida.

Had the provisions in question become effective only upon the signature of the Governor then Georgians could benefit if they: owned land they don’t live on in Georgia, planed on selling that land, then used the money to buy similar land out of state. Not exactly all Georgians, but a fair number none the less.

Yet this is to miss the entire point of this complaint; the O’Neal amendment made the bill retroactively beneficial. In order to benefit from the amendment a person or corporation would have to had: made a 1031 exchange between 1/1/2004 and 4/11/2005, known that the law had been changed regarding out of state exchanges, and known the change had been made retroactively effective (which, as noted above, even the top real estate lobbyist for Georgia did not know). Other than a person who knew he could get the law changed after a deal was already completed, it is hard to see who else benefited from the amendment.

According to the fiscal note of HB 488 created prior to O’Neal’s amendment by the Department of Revenue, the 2005 revenue impact for these two relevant provisions was expected to be \$1.2 million.³⁶ Undoubtedly the revenue impact of the O’Neal amendment to sections 9 and 14 would be even smaller. No one in 2004 would have specifically taken advantage of the bill because it didn’t exist. One would have had to complete an out of state exchange despite the previous tax burden and then discover that they are entitled to a refund after the fact. Added to that fact, almost no one knew about

³⁶ Attachment C

the retroactive provision in the law. Very few of O'Neal's legislative colleagues who voted on the bill did, much less the people of Georgia. Yet even if the amendment had the same impact as expected for all of 2005, Perdue's \$101,267.07 represents nearly 10% of the entire revenue loss to the state for the year.

Given the following facts, it is disingenuous to argue that the bill was meant for all the people of Georgia:

1. At a minimum, Perdue received nearly 10% of the benefit.
2. Perdue's own Revenue Commissioner cannot name another Georgian who benefited from the amendment to the bill.³⁷
3. The amendment was written by Perdue's real estate lawyer.

Conclusion

If this complaint does not meet the evidence threshold as established by the Committee then nothing short of a videotaped confession will. O'Neal's lack of personal integrity and actions on behalf of his client have significantly damaged the Legislature as an institution; it is my hope that this Committee can reverse this damage by fully investigating this complaint and holding O'Neal accountable for his actions.

³⁷ Salzer, "3 minutes, 1 tax bill, \$100,000 for Perdue," *AJC*, 10/1/2006

As a service to the committee I have provided the names and addresses of the people who can shed further light on this matter.

Relevant Witnesses-

Lawrence E. O’Neal 311 Margie Drive Warner Robins, GA 31099	Stephen F. Holcomb 105 Bob White Road Kathleen, GA 31047	George “Sonny” Perdue 391 West Paces Ferry Road Atlanta GA 30342
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Bart L. Graham 1800 Century Center Blvd., N.E. Atlanta, GA 30345	Casey Cagle 240 State Capitol Atlanta, GA 30334
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Mike Long 311 Margie Drive Warner Robins, GA 31099	Thomas Hall 311 Margie Drive Warner Robins, GA 31099	Mitch Seabaugh 302-B LOB Atlanta, GA 30334
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Relevant Code Section-

45-10-1

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.

V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

VIII. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

IX. Expose corruption wherever discovered.