

2019 -- S 0176

=====
LC000629
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

—————
A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ESTABLISHING AN OFFICE OF
INSPECTOR GENERAL

Introduced By: Senators Algiere, Morgan, Paolino, de la Cruz, and Rogers

Date Introduced: January 24, 2019

Referred To: Senate Rules, Government Ethics and Oversight

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 9.4

4 INSPECTOR GENERAL

5 **42-9.4-1. Purpose.**

6 The office of inspector general shall be an independent administrative agency charged
7 with the purpose of preventing and detecting fraud, waste, abuse and mismanagement in the
8 expenditure of public funds, whether federal, state, or local, and relating to any and all state
9 programs and operations as well as the procurement of any supplies, services, or construction, by
10 agencies, bureaus, divisions, sections, departments, offices, commissions, institutions and
11 activities of the state of Rhode Island, including those districts, authorities, or political
12 subdivisions created by the general assembly, the governor, and any court, including any city or
13 town within the state of Rhode Island. Investigations may include the expenditures by
14 nongovernmental agencies of federal, state and local public funds.

15 **42-9.4-2. Definitions.**

16 As used in this chapter, unless the context requires otherwise, the following terms shall
17 have the following meanings:

18 (1) "Construction" means the process of building, altering, repairing, improving, or

1 demolishing any public structure or building, or other improvements of any kind to any public
2 property.

3 (2) "Contract" means all types of agreements, including grants and orders, for the
4 purchase or disposal of supplies, services, construction, or any other item. It includes:

5 (i) Awards;

6 (ii) Contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type;

7 (iii) Contracts providing for the issuance of job or task orders;

8 (iv) Leases;

9 (v) Letter contracts;

10 (vi) Purchase orders; and

11 (vii) Construction management contracts.

12 It also includes supplemental agreements with respect to any of the foregoing.

13 (3) "Contractor" means any person, corporation, partnership, business, union, committee,
14 or other organization entity or group of individuals performing any tasks, or duties defined under
15 a written or oral contract with and for the state of Rhode Island or the joint committee on
16 legislative services.

17 (4) "Procurement" means the purchasing, buying, renting, leasing, or otherwise obtaining
18 any supplies, services, or construction. It also includes all functions that pertain to the obtaining
19 of any supply, service, or construction item, including a description of requirements, selection
20 and solicitation of sources, preparation, and award of contract, and all phases of contract
21 administration.

22 (5) "Public funds" means state, federal or local funds, either appropriated, non-
23 appropriated or given under right of grant.

24 (6) "Services" means the rendering by a contractor of its time and effort rather than the
25 furnishing of a specific end product, other than reports which are merely incidental to the required
26 performance of services.

27 (7) "Supplies" means all property, including, but not limited to, leases of real property,
28 printing, and insurance, except land or permanent interest in land.

29 **42-9.4-3. Establishment of office -- Appointment and removal of inspector general.**

30 There is hereby established an office of inspector general, (hereinafter referred to as the
31 "office"). There shall be in the office an inspector general, who shall be the administrative head of
32 the office and who shall be appointed by a majority vote of the governor, the attorney general, the
33 general treasurer, the lieutenant governor, secretary of state, the speaker and the minority leader
34 of the house of representatives and the president and minority leader of the senate for a five (5)

1 year term to begin July 1 and end June 30, five (5) years later. The appointee shall serve one term
2 only. The person so appointed shall be selected without regard to political affiliation and with a
3 demonstrated ability in more than one of the following areas: accounting, auditing, financial
4 analysis, law, management analysis, public administration, investigation and criminal justice
5 administration.

6 The selection process of a qualified inspector general shall include at least one public
7 forum. If an inspector general is not selected within one month of a new inspector general term,
8 the governor shall appoint an inspector general. The inspector general shall have at least five (5)
9 years experience in accounting, criminal justice, or a closely related profession and a bachelor's
10 degree from an accredited college or university with a major in accounting, criminal justice, or a
11 closely related field of study.

12 No inspector general shall hold, or be a candidate for, any other elective or appointed
13 public office while an inspector general and for one year prior. No inspector general shall hold a
14 position in any political party or political committee, or participate in any political campaign of
15 any candidate for public office while an inspector general.

16 In case of a vacancy in the position of inspector general, their successor shall be
17 appointed in the manner described above, and shall serve from their date of appointment until the
18 fifth June 30 following their appointment. If this vacancy is not filled within one month, then the
19 governor shall appoint an inspector general.

20 The person so appointed may be removed from office for cause by a two-thirds (2/3) vote
21 of the governor, the attorney general, the general treasurer, the lieutenant governor, secretary of
22 state, the speaker and the minority leader of the house of representatives and the president and
23 minority leader of the senate. Cause may include substantial neglect of duty, gross misconduct or
24 conviction of a crime whether or not it is work related. The reasons for removal of the inspector
25 general shall be stated in writing and shall include the basis for such removal. The writing shall
26 be a public document. The inspector general shall have ten (10) days to submit a written appeal,
27 which shall be a public document. If no appeal is made, the inspector general shall be dismissed
28 from office. If an appeal is made, a vote shall be taken in the senate. A two-thirds (2/3) vote of
29 the senate shall be required to dismiss the inspector general.

30 **42-9.4-4. Employees -- Appointment and removal, salaries, qualifications.**

31 The inspector general may appoint and remove such employees as deemed necessary to
32 perform the duties of the office, including, but not limited to, assistant inspectors general, chief
33 and deputy counsels, clerks, paralegals, accountants, auditors, financial management analysts and
34 investigators. The inspector general may determine their salaries and duties; provided, however,

1 that the total amount of all such salaries shall not exceed the sum appropriated therefor by the
2 general assembly.

3 The inspector general shall file an annual personnel report not later than the first
4 Wednesday in February with the senate and house finance committees containing the job
5 classifications, duties and salary of each officer and employee within the office together with
6 personnel regulations applicable to said officers and employees. The inspector general shall file
7 amendments to such report with the senate and house finance committees whenever any change
8 becomes effective.

9 No officer or employee of the office of inspector general shall hold, or be a candidate for,
10 any elective public office while an officer or employee, or for one year thereafter, nor shall they
11 hold a position in any political party or political committee, or participate in any political
12 campaign of any candidate for public office while an officer or employee.

13 **42-9.4-5. Inspector general -- Salary and budget.**

14 The general assembly shall annually set the salary of the inspector general and shall
15 appropriate sufficient funds for the total budget for the office.

16 **42-9.4-6. Rules and regulations.**

17 The office shall, pursuant to the provisions of chapter 35 of title 42, ("administrative
18 procedures act"), promulgate rules and regulations which shall govern its proceedings.

19 **42-9.4-7. Duties.**

20 (a) The inspector general shall supervise, coordinate and/or conduct audits, criminal, civil
21 and administrative investigations and inspections or oversight reviews, when necessary, relating
22 to programs and operations listed in § 42-9.4-1. The inspector general shall review laws and
23 regulations relating to programs and operations listed in § 42-9.4-1 and shall determine if public
24 bodies listed in § 42-9.4-1 are in compliance, and shall make recommendations concerning the
25 effect of such laws or regulations on the prevention and detection of fraud, waste and abuse. The
26 inspector general may recommend policies that will assist in the prevention or detection of fraud,
27 waste and abuse and mismanagement. The person in charge of, or the governing body of any
28 public body listed in § 42-9.4-1, may request the assistance of the inspector general with respect
29 to implementation of any reviews, audits, and/or investigations as deemed appropriate, and
30 implement suggested policy or procedure changes. In such events the inspector general may
31 assign personnel to conduct, supervise, or coordinate such activity as deemed necessary and
32 appropriate to perform their duties in a diligent and prudent manner. The inspector general may
33 recommend policies for the conduct, supervision or coordination of relationships, between state
34 and county agencies and other state and local governmental agencies, as well as federal

1 governmental agencies and nongovernmental entities with respect to all matters relating to the
2 prevention and detection of fraud, waste, abuse and mismanagement in or relating to any and all
3 programs and activities of the state of Rhode Island as set forth in § 42-9.4-1.

4 (b) The inspector general shall establish and maintain an information system to receive
5 communications from the general public relating to the duties of the office to guarantee the
6 anonymity of the individual supplying the information consisting of the transmission by email,
7 regular mail or other electronic system that does not involve the use of a telephone line.

8 **42-9.4-8. Inspection of records and papers –Investigations – Subpoenas.**

9 (a) The inspector general, in carrying out the duties outlined in this chapter, shall have
10 access to all records, reports, audits, reviews, papers, books, documents, recommendations,
11 correspondence, including information relative to the purchase of services or anticipated purchase
12 of services from any contractor by any public body set forth in § 42-9.4-1, and any other data and
13 material that is maintained by or available to any public body, regardless of the media in which it
14 is maintained which is, in any way, related to the programs and operations with respect to the
15 state of Rhode Island, including any local town, municipality or city.

16 (b) The inspector general may request information, cooperation and assistance from any
17 state, county or local governmental agency as may be necessary for carrying out their duties and
18 responsibilities. Upon receipt of such request, each person in charge of, or the governing body of
19 any public body set forth in § 42-9.4-1, shall furnish to the inspector general or their authorized
20 agent or representative such information, cooperation and assistance, including information
21 relative to the purchase of services or anticipated purchase of services from any contractor by any
22 public body within ten (10) business days of receipt of the inspector general’s request. If the
23 request for the information requested cannot be complied with, within ten (10) business days, the
24 senior official of the governmental agency must notify the inspector general before the expiration
25 of the ten (10) business days as to the reason that the request cannot be complied within the time
26 frame of this section, and shall provide a specific date for expected compliance.

27 (c) The inspector general may initiate and conduct investigations, audits and compliance
28 reviews, and shall prepare detailed reports relating to findings and conclusions concerning the
29 administration of the programs and operations of the applicable public bodies listed in § 42-9.4-1,
30 as are in the judgment of the inspector general necessary and may conduct an examination of any
31 public documents, and any information with respect to whether internal quality controls are in
32 place and operating.

33 (d) The inspector general shall have direct and prompt access to the head of any public
34 body set forth in § 42-9.4-1 when necessary for any purpose pertaining to the performance of

1 their duties and responsibilities under this chapter.

2 (e) The inspector general may request the production, on a voluntary basis, of testimony
3 or documents from any individual, firm or nongovernmental entity which relate to actions or
4 matters that pertain to state, municipal or local governmental agencies as dictated by their duties
5 and responsibilities.

6 (f)(1) The inspector general may issue a subpoena for the production of all records,
7 reports, audits, reviews, papers, books, documents, recommendations, correspondence and any
8 other data and material relevant to any matter under audit or investigation pursuant to the
9 provisions of this chapter, no matter in which media the information is maintained.

10 (2) A subpoena may be issued only when a person, corporation or other entity under
11 investigation or being audited refuses to voluntarily comply with a request from the inspector
12 general.

13 (3) The subpoena shall be served in the same manner as a subpoena for the production of
14 documents in civil cases issued on behalf of the state of Rhode Island, and all provisions of law
15 relative to the subpoena shall apply to a subpoena issued pursuant to this chapter. Any justice of
16 the superior court may, upon application by the inspector general, issue an order to compel the
17 production of records, reports, audits, reviews, papers, books, documents, recommendations,
18 correspondence, and any other data and material as aforesaid in the same manner and to the same
19 extent as before said superior court. Any failure to obey the order may be punished by the
20 superior court as a contempt of court.

21 (4) Any subpoena issued pursuant to this section shall not be made public by the
22 inspector general or any officer or employee of that office, nor shall any documents or records
23 provided pursuant to this section be made public until such time as it is necessary for the
24 inspector general to do so in the performance of their official duties. The production of
25 documents or records pursuant to subpoena shall be governed by the same provisions with
26 reference to secrecy, which govern the proceedings of a grand jury. Disclosure of such
27 production, attendance, and testimony may be made to such members of the staff of the office of
28 the inspector general as is deemed necessary in the performance of the inspector general's duties
29 and responsibilities under this chapter, and such members of the staff may be present at the
30 production of records.

31 **42-9.4-9. Subpoena for witness testimony and for release of material evidence.**

32 (a) Whenever the inspector general has reason to believe that a person has information or
33 evidence in their possession with respect to any matter which is within the inspector general's
34 jurisdiction to investigate, a subpoena must issue for the attendance and testimony under oath of

1 any person as designated, or the surrender of identified items of evidence; provided, however,
2 that the subpoena may be issued by the inspector general only in the performance of official
3 duties relating to the detection of fraud, waste, abuse and mismanagement. The subpoena for
4 testimony or specific items identified as needed in support of an investigation shall include: the
5 name and address of the prospective witness or specific items identified as needed for the
6 investigation and the reasons for requesting a subpoena for testimony or production of items
7 deemed necessary to support the investigation.

8 (b) The inspector general or any other person duly authorized by law shall serve a
9 subpoena. Once the subpoena is served, the serving officer shall annotate the time and date
10 served, the person served and the location of service.

11 (c) A witness required by subpoena to attend and testify under oath and/or produce books
12 and records or other items as demanded, shall be given not less than forty-eight (48) hours notice
13 of the time and place for the taking of testimony or delivery of subpoenaed items, unless such
14 notice shall unduly interfere with the conduct of the investigation.

15 (d) The witness, at the time of service of a subpoena, shall be notified of the matter under
16 investigation concerning which the witness will be required to testify. A subject of an
17 investigation is a person whose conduct is within the scope of the investigation and is suspected
18 of committing or being party to an offense under investigation. The failure to furnish the witness
19 with any notice or information required to be given by this section shall cause the issued
20 subpoena to be invalid.

21 (e) A person subpoenaed to testify under oath shall appear and testify under oath at the
22 time and place designated on the subpoena. In addition, the witness shall be notified that they
23 have a right to consult with, and to have an attorney present at the time the testimony is taken,
24 and that they have a constitutional right not to furnish or produce evidence that may tend to
25 incriminate the person.

26 (f) The terms of any such subpoena must be reasonable and focused on specific testimony
27 or evidence sought and must directly relate to the matters under investigation. A subpoena issued
28 that is broad in nature is not considered valid. No subpoena may be issued for purposes of
29 harassment or for any illegitimate or improper purpose. All constitutional and statutory rights and
30 privileges which exist with respect to any subpoena issued by the inspector general, including the
31 privilege against self-incrimination, shall have the same force and effect with any and all existing
32 laws and constitutional rights.

33 (g) A subpoenaed person may object to the subpoena served upon them in advance of the
34 return date of the subpoena by a motion to quash filed in the superior court of the state of Rhode

1 Island. The filing of a motion to quash shall stay all pending subpoenas until further order of the
2 superior court. Any justice of the superior court may, upon application by the inspector general,
3 issue an order to compel the attendance of witnesses subpoenaed, and the giving of testimony
4 under oath in furtherance of any audit or investigation under this chapter in the same manner and
5 to the same extent as before the superior court. Failure to obey any order of the court with respect
6 to a subpoena may be punished by the court as contempt.

7 (h) Any subpoena issued pursuant to this section shall not be made public by the
8 inspector general or any persons subject to their direction or by any member of the inspector
9 general's office designated to hear testimony under this section, and the same provisions with
10 reference to secrecy, which govern grand jury proceedings, shall govern testimony given.
11 Whoever violates the provisions of this subsection shall be punished by imprisonment for not
12 more than six (6) months or by a fine of not more than one thousand dollars (\$1,000). Disclosure
13 of such testimony may be made to such members of the staff of the office of inspector general as
14 is deemed necessary by the inspector general to assist in the performance of the office's duties
15 and responsibilities and such members of the staff may be present at the taking of such testimony.

16 **42-9.4-10. Compact – Investigation.**

17 (a) The inspector general must accept and may investigate or audit complaints or
18 information from any individual concerning the possible existence of any activity constituting
19 fraud, waste, abuse and mismanagement relating to programs and operations as set forth in § 42-
20 9.4-1.

21 (b) The inspector general shall not, after receipt of a complaint or information from an
22 employee, contractor or private citizen who requests confidentiality, disclose the identity of that
23 individual without the written consent of said individual, unless the inspector general determines
24 such disclosure is necessary and unavoidable during the course of an investigation. In such event,
25 the individual shall be notified immediately of the disclosure. The inspector general shall set up
26 an anonymous hotline for reporting possible wrongdoings.

27 (c) Employees are protected under chapter 50 of title 28, the ("Rhode Island
28 Whistleblower's Protection Act").

29 **42-9.4-11. Reports to the attorney general or United States Attorney.**

30 (a) In carrying out their duties and responsibilities, the inspector general shall report to
31 the attorney general, the United States Attorney or both whenever the inspector general has
32 reasonable grounds to believe there has been a violation of federal or state criminal law. The
33 attorney general shall institute appropriate proceedings in the furtherance of completing an
34 investigation and, if warranted, refer a matter for prosecution.

1 (b) The inspector general shall refer audit or investigative findings to the state ethics
2 commission, or to any other federal, state or local agency, which has an interest in said findings.

3 (c) Any referrals made under this section shall not be made public.

4 **42-9.4-12. Coordination with other state agencies.**

5 The inspector general may coordinate with other state agencies that are responsible for
6 investigating, auditing, reviewing or evaluating the management of state agencies for the purpose
7 of sharing information and avoiding duplication of effort.

8 **42-9.4-13. Civil actions.**

9 The inspector general shall have the authority to institute a civil recovery action if
10 authorized by the attorney general. In any case where the inspector general has discovered
11 fraudulent acts and believes that civil recovery proceedings may be appropriate, the matter shall
12 be referred to the attorney general. The attorney general may institute whatever proceedings
13 deemed appropriate, may refer the matter to another state or local agency, may authorize the
14 initiation of appropriate civil proceedings by the inspector general, may retain the matter for
15 further investigation, or may remand the matter to the inspector general for further investigation.

16 **42-9.4-14. Annual and interim reports.**

17 (a) The office of inspector general shall, no later than April 1 of each year, prepare a
18 report summarizing the activities of the office for the prior calendar year. The office may also
19 prepare interim reports. These reports shall be forwarded to the governor, lieutenant governor,
20 attorney general, secretary of state, general treasurer and the general assembly, and shall be made
21 available to the public.

22 (b) The report shall include, but not be limited to:

23 (i) A description of significant problems in the areas of fraud, waste and abuse within
24 programs and operations within the jurisdiction of the office; and

25 (ii) A description of the recommendations for corrective action made by the office during
26 the reporting period with respect to significant deficiencies in the areas of fraud, waste and abuse;
27 and

28 (iii) The identification of each significant recommendation described in previous annual
29 reports on which corrective action has not been completed; and

30 (iv) A summary of matters referred to prosecuting authorities and the prosecutions and
31 convictions which have resulted; and

32 (v) A summary of any matters concerning the recovery of monies as a result of a civil suit
33 by the office or a referral to another agency for the purposes of such suit; and

34 (vi) A list of all audit reports completed by the office during the reporting period and a

1 statement of recommendations of amendments to this chapter or the rules, regulations or
2 procedures governing the office of inspector general which would improve the effectiveness or
3 the operation of the office.

4 (c) The head or governing body of each public body may, within sixty (60) days of
5 receipt, comment upon any references to the public body contained within the report. The
6 comment, if any, shall be forwarded to the governor, the attorney general, the general assembly
7 and the office of inspector general.

8 (d) The report of the inspector general shall be made public on the day of filing;
9 provided, that the report shall not list the names of individuals or corporations, nor describe them
10 with sufficient particularity as to readily identify them to the general public in those cases in
11 which no official disposition has been made by the office of inspector general, the department of
12 the attorney general or the local office of the United States Attorney.

13 SECTION 2. This act shall take effect upon passage.

=====
LC000629
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ESTABLISHING AN OFFICE OF
INSPECTOR GENERAL

1 This act would establish the office of inspector general as an independent administrative
2 agency charged with the responsibility to investigate, detect, and prevent fraud, waste, abuse, and
3 mismanagement in the expenditure of public funds.

4 This act would take effect upon passage.

=====
LC000629
=====