

2018 -- S 2104

LC003864

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

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

Introduced By: Senators Raptakis, Paolino, Sheehan, Cote, and Algieri

Date Introduced: January 18, 2018

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 and  
13 town within the state of Rhode Island.

14 **42-9.4-2. Definitions.**

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

17 (1) "Construction" means the process of building, altering, repairing, improving, or  
18 demolishing any public structure or building, or other improvements of any kind to any public

1 property.

2 (2) "Contract" means all types of agreements, including grants and orders, for the  
3 purchase or disposal of supplies, services, construction, or any other item. It includes: awards;  
4 contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for  
5 the issuance of job or task orders; leases; letter contracts; purchase orders; and construction  
6 management contracts. It also includes supplemental agreements with respect to any of the  
7 foregoing.

8 (3) "Contractor" means any person, corporation, partnership, business, union, committee,  
9 or other organization entity or group of individuals performing any tasks, or duties defined under  
10 a written or oral contract with and for the state of Rhode Island.

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

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

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

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

23 **42-9.4-3. Establishment of office; appointment and removal of inspector general.**

24 (a) There is hereby established an office of inspector general, hereinafter called (the  
25 "office"). There shall be in the office an inspector general, who shall be the administrative head of  
26 the office and who shall be appointed by a majority vote of the governor, the attorney general and  
27 the general treasurer for a five (5) year term to begin July 1 and end June 30, five (5) years later.  
28 The appointee shall serve one term only. The person so appointed shall be selected without regard  
29 to political affiliation and with a demonstrated ability in accounting, auditing, financial analysis,  
30 law, management analysis, public administration, investigation or criminal justice administration.

31 (b) The selection process of a qualified inspector general shall include at least one public  
32 forum. If an inspector general is not selected within one month of a new inspector general term,  
33 the governor shall appoint an inspector general. The inspector general shall have at least five (5)  
34 years of experience in accounting, criminal justice, or a closely related profession and a

1 bachelor's degree from an accredited college or university with a major in accounting, criminal  
2 justice, or a closely related field of study.

3 (c) No inspector general shall hold, or be a candidate for, any other elective or appointed  
4 public office while an inspector general and for one year thereafter. No inspector general shall  
5 hold a position in any political party or political committee, or participate in any political  
6 campaign of any candidate for public office while an inspector general.

7 (d) In case of a vacancy in the position of inspector general, their successor shall be  
8 appointed in the manner described above, and shall serve from their date of appointment until the  
9 fifth June 30 following their appointment. If this vacancy is not filled within one month, then the  
10 governor shall appoint an inspector general.

11 (e) The person so appointed may be removed from office for cause by a unanimous vote  
12 of the governor, the lieutenant governor and the secretary of state. Such cause may include  
13 substantial neglect of duty, gross misconduct or conviction of a crime whether or not it is work  
14 related. The reasons for removal of the inspector general shall be stated in writing and shall  
15 include the basis for such removal. Such writing shall be a public document. The inspector  
16 general shall have ten (10) days to submit a written appeal, which shall be a public document. If  
17 no appeal is made, the inspector general shall be dismissed from office. If an appeal is made, a  
18 vote shall be taken in the senate. A two-thirds (2/3) vote of the senate shall be required to dismiss  
19 the inspector general.

20 **42-9.4-4. Employees; appointment and removal, salaries, qualifications.**

21 (a) The inspector general may, subject to appropriation, appoint and remove such  
22 employees as they deem necessary to perform the duties of the office, including, but not limited  
23 to, assistant inspector generals, chief and deputy counsels, clerks, paralegals, accountants,  
24 auditors, financial management analysts and investigators. The inspector general may determine  
25 their salaries and duties; provided, however, that the total amount of all such salaries shall not  
26 exceed the sum appropriated therefor by the general assembly.

27 (b) The inspector general shall file an annual personnel report not later than the first  
28 Wednesday in February with the senate and house finance committees containing the job  
29 classifications, duties and salary of each officer and employee within the department together  
30 with personnel regulations applicable to said officers and employees. The inspector general shall  
31 file amendments to such report with the senate and house finance committees whenever any  
32 change becomes effective.

33 (c) No officer or employee of the office of inspector general shall hold, or be a candidate  
34 for, any elective public office while an officer or employee, or for one year thereafter, nor shall

1 they hold a position in any political party or political committee, or participate in any political  
2 campaign of any candidate for public office while an officer or employee.

3 **42-9.4-5. Inspector general; salary and budget.**

4 The general assembly shall annually set the salary of the inspector general and set the  
5 total budget for the office of the inspector general.

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

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

9 **42-9.4-7. Duties.**

10 The inspector general shall supervise, coordinate and/or conduct audits, criminal, civil  
11 and administrative investigations and inspections or oversight reviews, when necessary, relating  
12 to programs and operations listed in § 42-9.4-1. The inspector general shall review statutes and  
13 regulations relating to programs and operations listed in § 42-9.4-1 and shall determine if public  
14 bodies listed in § 42-9.4-1 are in compliance and shall make recommendations concerning the  
15 effect of such statutes or regulations on the prevention and detection of fraud, waste and abuse.  
16 The inspector general may recommend policies that will assist in the prevention or detection of  
17 fraud, waste and abuse and mismanagement. The person in charge of, or the governing body of  
18 any public body listed in § 42-9.4-1, may request the assistance of the office of inspector general  
19 with respect to implementation of any reviews, audits, and/or investigations as deemed  
20 appropriate and implement suggested policy or procedure changes. In such events the inspector  
21 general may assign personnel to conduct, supervise, or coordinate such activity as deemed  
22 necessary and appropriate to perform their duties in a diligent and prudent manner. The inspector  
23 general may recommend policies for the conduct, supervision or coordination of relationship,  
24 between state and county agencies and other state and local governmental agencies as well as  
25 federal governmental agencies and nongovernmental entities with respect to all matters relating to  
26 the prevention and detection of fraud, waste, abuse and mismanagement in or relating to any and  
27 all programs and activities of the state of Rhode Island as listed in § 42-9.4-1.

28 **42-9.4-8. Inspection of records and papers; investigations; subpoenas.**

29 (a) The inspector general, in carrying out the duties outlined in this chapter, shall have  
30 access to all records, reports, audits, reviews, papers, books, documents, recommendations,  
31 correspondence, including information relative to the purchase of services or anticipated purchase  
32 of services from any contractor by any public body listed in § 42-9.4-1, and any other data and  
33 material that is maintained by or available to any public body regardless of the media in which it  
34 is maintained which is in any way related to the programs and operations with respect to the state

1 of Rhode Island, including any local town, municipality or city.

2 (b) The inspector general may request information, cooperation and assistance from any  
3 state, county or local governmental agency as may be necessary for carrying out their duties and  
4 responsibilities. Upon receipt of such request, each person in charge of, or the governing body of  
5 any public body listed in § 42-9.4-1, shall furnish to the inspector general or their authorized  
6 agent or representative such information, cooperation and assistance, including information  
7 relative to the purchase of services or anticipated purchase of services from any contractor by any  
8 public body within ten (10) business days of receipt of the inspector general's request. If the  
9 request for the information requested cannot be complied within the ten (10) business days, the  
10 senior official of the governmental agency must notify the inspector general before the expiration  
11 of the ten (10) business days as to the reason that the request cannot be complied with in the time  
12 frame of this section and shall provide a specific date for expected compliance.

13 (c) The inspector general may initiate and conduct investigations, audits and compliance  
14 reviews and shall prepare detailed reports relating to findings and conclusions concerning the  
15 administration of the programs and operations of the applicable public bodies listed in § 42-9.4-1,  
16 as are in the judgment of the inspector general necessary and may conduct an examination of any  
17 public documents.

18 (d) The inspector general shall have direct and prompt access to the head of any public  
19 body listed in § 42-9.4-1 when necessary for any purpose pertaining to the performance of their  
20 duties and responsibilities under this chapter.

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

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

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

32 (3) Such subpoena shall be served in the same manner as a subpoena for the production  
33 of documents in civil cases issued on behalf of the state of Rhode Island, and all provisions of law  
34 relative to said subpoena shall apply to a subpoena issued pursuant to this chapter. Any justice of

1 the superior court may, upon application by the inspector general, issue an order to compel the  
2 production of records, reports, audits, reviews, papers, books, documents, recommendations,  
3 correspondence and any other data and material as aforesaid in the same manner and to the same  
4 extent as before said superior court. Any failure to obey such order may be punished by the  
5 superior court as a contempt of court.

6 (4) Any subpoena issued pursuant to this section, shall not be made public by the  
7 inspector general or any officer or employee of that department, nor shall any documents or  
8 records provided pursuant to this section be made public until such time as it is necessary for the  
9 inspector general to do so in the performance of their official duties. The production of such  
10 documents or records pursuant to subpoena shall be governed by the same provisions with  
11 reference to secrecy, which govern the proceedings of a grand jury. Disclosure of such  
12 production, attendance, and testimony may be made to such members of the staff of the office of  
13 the inspector general as is deemed necessary in the performance of the inspector general's duties  
14 and responsibilities under this chapter and such members of the staff may be present at the  
15 production of records.

16 **42-9.4-9. Subpoena for witness testimony and for release of material evidence.**

17 (a) Whenever the inspector general has reason to believe that a person has information or  
18 evidence in their possession with respect to any matter which is within the inspector general's  
19 jurisdiction to investigate, they may issue a subpoena for the attendance and testimony under oath  
20 of any person as designated, or the surrender of identified item(s) of evidence; provided,  
21 however, that such subpoena may be issued by the inspector general only in the performance of  
22 official duties relating to the detection of fraud, waste, abuse and mismanagement. The subpoena  
23 for testimony or specific items identified as needed in support of an investigation shall include:  
24 the name and address of the prospective witness or specific items identified as needed for the  
25 investigation and the reasons for requesting a subpoena for testimony or production of items  
26 deemed necessary to support the investigation.

27 (b) The inspector general or anyone duly authorized by law shall serve such subpoena.  
28 Once the subpoena is served, the serving officer shall annotate the time and date served, the  
29 person served and the location of service.

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

34 Such witness, at the time of service of a subpoena, shall be notified of the matter under

1 investigation concerning which such witness will be required to testify. A subject of an  
2 investigation is a person whose conduct is within the scope of the investigation and is suspected  
3 of committing or being party to an offense under investigation. The failure to furnish such witness  
4 with any notice or information required to be given by this section shall cause the issued  
5 subpoena to be invalid.

6 (d) A person subpoenaed to testify under oath shall appear and testify under oath at the  
7 time and place designated on the subpoena. In addition, the witness shall be notified that they  
8 have a right to consult with and to have an attorney present at the time the testimony is taken and  
9 that they have a constitutional right not to furnish or produce evidence that may tend to  
10 incriminate them.

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

18 (f) A subpoenaed person may object to the subpoena served upon them in advance of the  
19 return date of the subpoena by a motion to quash filed in the superior court of the state of Rhode  
20 Island. The filing of a motion to quash shall stay all pending subpoenas until further order of the  
21 superior court. Any justice of the superior court may, upon application by the inspector general,  
22 issue an order to compel the attendance of witnesses subpoenaed as aforesaid and the giving of  
23 testimony under oath in furtherance of any audit or investigation under this chapter in the same  
24 manner and to the same extent as before the superior court. Failure to obey any order of the court  
25 with respect to a subpoena may be punished by said court as contempt.

26 (g) Any subpoena issued pursuant to this section shall not be made public by the  
27 inspector general or any persons subject to their direction or by any member of the inspector  
28 general's office designated to hear testimony under this section, and the same provisions with  
29 reference to secrecy, which govern grand jury proceedings, shall govern testimony given.  
30 Whoever violates the provisions of this subsection shall be punished by imprisonment for not  
31 more than six (6) months in a jail or house of correction or by a fine of not more than one  
32 thousand dollars (\$1,000). Disclosure of such testimony may be made to such members of the  
33 staff of the office of inspector general as is deemed necessary by the inspector general to assist in  
34 the performance of the office's duties and responsibilities and such members of the staff may be

1 present at the taking of such testimony.

2 **42-9.4-10. Compact – Investigation.**

3 (a) The inspector general must accept and may investigate or audit complaints or  
4 information from any individual concerning the possible existence of any activity constituting  
5 fraud, waste, abuse and mismanagement relating to programs and operations as listed in § 42-9.4-  
6 1.

7 (b) The inspector general shall not, after receipt of a complaint or information from an  
8 employee who requests confidentiality, disclose the identity of the employee without the written  
9 consent of said employee, unless the inspector general determines such disclosure is necessary  
10 and unavoidable during the course of an investigation. In such event, the employee shall be  
11 notified immediately of such disclosure.

12 (c) Employees are protected under the "Rhode Island whistleblowers' protection act,"  
13 chapter 50 of title 28.

14 **42-9.4-11. Reports to the attorney general or United States attorney.**

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

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

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

23 **42-9.4-12. Civil actions.**

24 The inspector general shall have the authority to institute a civil recovery action if  
25 authorized by the attorney general. In any case where the inspector general has discovered  
26 fraudulent acts and believes that civil recovery proceedings may be appropriate, they shall refer  
27 the matter to the attorney general. The attorney general may institute whatever proceedings they  
28 deem appropriate, may refer the matter to another state or local agency, may authorize the  
29 initiation of appropriate civil proceedings by the inspector general, may retain the matter for  
30 further investigation, or may remand the matter to the inspector general for further investigation.

31 **42-9.4-13. Annual and interim reports.**

32 (a) The office of inspector general shall, no later than April 1 of each year, prepare a  
33 report summarizing the activities of the office of inspector general for the prior calendar year. The  
34 office of inspector general may also prepare interim reports. These reports shall be forwarded to



1 the governor, lieutenant governor, attorney general, secretary of state, general treasurer and the  
2 general assembly and shall be made available to the public.

3 (b) The report shall include, but not be limited to: a description of significant problems in  
4 the areas of fraud, waste and abuse within programs and operations within the jurisdiction of the  
5 office; a description of the recommendations for corrective action made by the office during the  
6 reporting period with respect to significant deficiencies in the areas of fraud, waste and abuse; the  
7 identification of each significant recommendation described in previous annual reports on which  
8 corrective action has not been completed; a summary of matters referred to prosecuting  
9 authorities and the prosecutions and convictions which have resulted; a summary of any matters  
10 concerning the recovery of monies as a result of a civil suit by the office of inspector general or a  
11 referral to another agency for the purposes of such suit; a list of all audit reports completed by the  
12 office during the reporting period and a statement of recommendations of amendments to this  
13 chapter or the rules, regulations or procedures governing the office of inspector general which  
14 would improve the effectiveness or the operation of the office.

15 (c) The head or governing body of each public body may, within sixty (60) days of  
16 receipt, comment upon any references to such public body contained within the report. Such  
17 comment, if any, shall be forwarded to the governor, the attorney general, the general assembly  
18 and the office of inspector general.

19 (d) The report of the inspector general shall be made public on the day of filing;  
20 provided, that the report shall not list the names of individuals or corporations, nor describe them  
21 with sufficient particularity as to readily identify them to the general public in those cases in  
22 which no official disposition has been made by the office of inspector general, the office of  
23 attorney general or the local office of the U.S. Attorney.

24 **42-9.4-14. Confidentiality of records.**

25 (a) All records of the office of inspector general shall be confidential and shall not be  
26 public records, unless it is necessary for the inspector general to make such records public in the  
27 performance of their duties.

28 (b) Violation of the provisions of the confidentiality of proceedings by the inspector  
29 general or any member of the staff, or by any member of the inspector general's office, shall be  
30 punished by imprisonment in a jail or house of correction for not more than six (6) months or by a  
31 fine of not more than one thousand dollars (\$1,000).

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

=====  
LC003864  
=====

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 an office of inspector general as an independent administrative  
2 agency charged with preventing and detecting fraud, waste and abuse, and mismanagement in the  
3 expenditure of public funds, regardless of whether funds are from the state, federal or local  
4 governments. The inspector general would oversee all state programs and operations as well as  
5 the procurement of supplies by state agencies.

6           This act would take effect upon passage.

=====  
LC003864  
=====