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LC001571

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO PUBLIC FINANCE -- THE OFFICE OF INTERNAL AUDIT

Introduced By: Senators Tikoian, Ciccone, Britto, Burke, DiPalma, McKenney, and Euer

Date Introduced: March 22, 2023

Referred To: Senate Judiciary

(Dept. of Administration)

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 35-7.1 of the General Laws entitled "The Office of Internal Audit"
2 is hereby amended by adding thereto the following sections:

3 **35-7.1-6.1. Inspection of records and papers -- Investigations -- Subpoenas.**

4 (a) The chief of the office of internal audit, in carrying out the duties outlined in this
5 chapter, shall have access to all records, reports, audits, reviews, papers, books, documents,
6 recommendations, correspondence, including information related to the purchase of service or
7 anticipated purchase of services from any agent, contractor or vendor by any public body as defined
8 in § 35-7.1-1(e), and any other data and material that is maintained by or available to any public
9 body, regardless of the media in which it is maintained, that is in any way related to the programs
10 and operations with respect to the State of Rhode Island, including any local town, municipality or
11 city.

12 (b) The chief may request information and records, cooperation and assistance from any
13 state, or local governmental agency as may be necessary for carrying out the chief's duties and
14 responsibilities. Upon receipt of such request, each person in charge of the public body shall furnish
15 to the chief, or agent or representative authorized by the chief, within ten (10) business days of
16 receipt of the chief's request, such information and records, cooperation and assistance, including
17 information related to the purchase of services or anticipated purchase of services from any
18 contractor or vendor by any public body. If the public body is unable to comply with the request
19 for records and/or information within ten (10) business days, the person in charge of the public

1 body must notify the chief in writing, prior to the expiration of the ten (10) business days, the reason
2 or reasons why the request cannot be fulfilled within this time and whether additional time is
3 necessary.

4 (c) The chief may initiate and conduct audits, investigations, and compliance reviews and
5 shall prepare detailed reports relating to findings, conclusions, and recommendations concerning
6 the administration of programs or operations, and internal controls over processes of public bodies.
7 Audits will be determined in accordance with a risk-based evaluation; other activities are in the
8 judgment of the chief, with guidance from the statewide audit advisory committee and the approval
9 of the director of management and budget.

10 (d) The chief shall have direct and prompt access to the head of any public body when
11 necessary for any purpose pertaining to the performance of the chief's duties and responsibilities
12 under this chapter.

13 (e) The chief may request the production, on a voluntary basis, of testimony or documents
14 from any firm or nongovernmental entity which relate to actions or matter that pertain to state,
15 municipal or local governmental agencies as dictated by his/her duties and responsibilities.

16 (f)(1) The director of administration, at the written request of the chief, may compel the
17 production of any records, reports, audits, reviews, papers, books, documents, recommendations,
18 correspondence and any other data or material, regardless of its form, relevant to any matter under
19 audit or investigation, pursuant to the provisions of this chapter, by issuing a subpoena duces tecum
20 signed by the director. Any entity or its agents acting in their official capacity who disobey any
21 such subpoena shall be considered in contempt of the department, and the department may proceed
22 in superior court to enforce compliance.

23 (2) A subpoena may be issued only when a corporation, other entity, or its agents acting
24 on their behalf, under investigation or being audited refuses to comply voluntarily with a request
25 from the chief.

26 (3) Such subpoena shall be served in the same manner as a subpoena for the production of
27 documents in a civil case issued on behalf of the State of Rhode Island, and all provisions of law
28 related to said subpoena shall apply to a subpoena issued pursuant to this chapter. Any justice of
29 the superior court may, upon application by the office of internal audit, issue an order to compel
30 the production of records, reports, audits, reviews, papers, books, documents, recommendations,
31 correspondence and any other data and material previously requested by the director of
32 administration. Any failure to obey such order may be punished by the superior court as a contempt
33 of court.

34 (4) The terms of any such subpoena must be reasonable and focused on specific evidence

1 sought and must directly relate to the matters under investigation. A subpoena issued that is broad
2 in nature is not considered valid. No subpoena may be issued for purposes of harassment or for any
3 illegitimate or improper purpose. All constitutional and statutory rights and privileges that exist
4 with respect to any subpoena issued by the director of administration, including the privilege
5 against self-incrimination, shall continue to have the same force and effect.

6 (5) An entity, or agents acting on its behalf, may object to a subpoena served upon the
7 entity, or agents in advance of the return date of the subpoena by a motion to quash filed in the
8 superior court of the State of Rhode Island. The filing of a motion to quash shall stay the pending
9 subpoena until further order of the superior court.

10 (6) Any subpoena issued pursuant to this section, shall not be made public, nor shall any
11 documents or records provided pursuant to this section to the office be made public until such time
12 as it is necessary for the chief to do so in the performance of the chief's official duties and in
13 consideration of the exemptions provided by the Rhode Island access to public records act, chapter
14 2 of title 38 ("access to public records"). The production of such documents or records pursuant to
15 subpoena shall be governed by the same provisions with reference to secrecy that govern the
16 proceedings of a grand jury. Disclosure of such production, attendance, and testimony may be made
17 to such members of the staff of the office of internal audit as deemed necessary in the performance
18 of the chief's duties and responsibilities under this chapter, and such members of the staff may be
19 present at the production of records.

20 **35-7.1-6.2. Subpoena for witness testimony and for release of material evidence .**

21 (a) Whenever the chief has reason to believe that an entity, or its agents acting on the
22 entity's behalf, have information or evidence with respect to any matter that is within the chief's
23 jurisdiction to investigate, the chief may request a subpoena for the attendance and testimony under
24 oath of any authorized agent of the entity as designated; provided, however, that such subpoena
25 may be issued only in the performance of official duties relating to the detection of fraud, waste,
26 abuse or mismanagement. The director of administration, upon written request by the chief, is
27 hereby authorized and empowered to summon witnesses to attend and testify on matters. A
28 subpoena for testimony or specific items needed in support of an investigation shall include the
29 name and address of the prospective witness(es) and/or a list of the specific items needed for the
30 investigation, and the reasons for requesting such subpoena.

31 (b) The subpoena shall be served in a similar manner to a subpoena served in a civil case
32 in the superior court of Rhode Island. Once the subpoena is served, the serving officer shall annotate
33 the time and date served, the person served and the location of service.

34 (c) A witness required by subpoena to attend and testify under oath and/or produce books

1 and records or other items as demanded, shall be given not less than forty-eight (48) hours advance
2 notice of the time and place for the taking of testimony or delivery of subpoenaed items, unless
3 such notice shall unduly interfere with the conduct of the investigation. Such witness, at the time
4 of service of a subpoena, shall be notified of the matter under investigation and whether the person
5 is a subject of the investigation. A “subject of an investigation” is a person who is reasonably
6 suspected of committing or being party to an offense in their capacity as an agent for an entity
7 under investigation. The failure to furnish such witness with any notice or information required to
8 be given by this section shall cause the issued subpoena to be invalid.

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

16 (e) A witness representing an entity in their official capacity who is subpoenaed to testify
17 shall appear and testify under oath at the time and place designated on the subpoena. In addition,
18 the witness shall be notified that as a witness a right to consult with and to have an attorney present
19 exists at the time the testimony is taken, and that the witness has a constitutional right not to furnish
20 or produce evidence that may tend to be incriminating.

21 (f) A witness representing an entity may object to the subpoena served upon them in
22 advance of the return date of the subpoena by a motion to quash filed in the superior court of the
23 State of Rhode Island. The filing of a motion to quash shall stay the pending subpoena until further
24 order of the superior court. Any justice of the superior court may, upon application by the chief,
25 issue an order to compel the attendance of witnesses subpoenaed as foresaid and the giving of
26 testimony under oath in furtherance of any audit or investigation under this chapter. Failure to obey
27 an order of the court with respect to a subpoena may be punished by said court as contempt.

28 (g) Any subpoena issued pursuant to this section shall not be made public and the same
29 provisions with reference to secrecy, which govern grand jury proceedings, shall govern testimony
30 given. Whoever violates the provisions of this subsection shall be punished by imprisonment for
31 not 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 staff
33 of the office of internal audit as deemed necessary by the chief to assist in the performance of the
34 office’s duties and responsibilities, and such members of the staff may be present at the taking of

1 [such testimony.](#)

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC FINANCE -- THE OFFICE OF INTERNAL AUDIT

1 This act would provide that the chief of the office of internal audit, when carrying out
2 official duties, shall have access to certain records relating to the purchase of services from vendors
3 or contractors by public bodies and would further provide the chief with the authority to initiate
4 audits, investigations and compliance reviews and would provide for a subpoena process for
5 witness testimony and material evidence upon the chief's request.

6 This act would take effect upon passage.

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