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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

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

Introduced By: Senators Sheehan, E O'Neill, Maher, Shibley, and Perry

Date Introduced: March 10, 2011

Referred To: Senate Finance

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

13 **42-9.4-2. Definitions.** -- As used in this chapter, unless the context requires otherwise,
14 the following words shall have the following meanings:

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

18 (2) "Contract" means all types of agreements, including grants and orders, for the

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

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

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

14 (5) “Public funds” means state, federal and local funds, either appropriated, non-
15 appropriated or given under right of grant.

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

19 (7) “Supplies” means all property, including, but not limited to, leases of real property,
20 printing, and insurance, except land or permanent interest in land.

21 **42-9.4-3. Establishment of office -- Appointment and removal of inspector general.**

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

29 The selection process of a qualified inspector general shall include at least one public
30 forum. If an inspector general is not appointed within one month of a new inspector general term,
31 the current inspector general shall remain in office until a new inspector general is appointed and
32 confirmed. The inspector general shall have at least five (5) years experience in accounting,
33 criminal justice, or a closely related profession and a bachelor’s degree from an accredited
34 college or university with a major in accounting, criminal justice, or a closely related field of

1 study.

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

6 In case of a vacancy in the position of inspector general, his/her successor shall be
7 appointed in the manner described above, and shall serve from his/her date of appointment until
8 the fifth (5th) June 30th following his/her appointment.

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

18 **42-9.4-4. Employees -- Appointment and removal, salaries, qualifications. --** The
19 inspector general may, subject to appropriation, appoint and remove such employees as he/she
20 deems necessary to perform the duties of the office, including, but not limited to, assistant
21 inspector generals, chief and deputy counsels, clerks, paralegals, accountants, auditors, financial
22 management analysts and investigators. The inspector general may determine their salaries and
23 duties; provided, however, that the total amount of all such salaries shall not exceed the sum
24 appropriated therefor by the general assembly.

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

31 No officer or employee of the office of inspector general shall hold, or be a candidate for,
32 any elective public office while an officer or employee, or for one year thereafter, nor shall he/she
33 hold a position in any political party or political committee, or participate in any political
34 campaign of any candidate for public office while an officer or employee.

1 **42-9.4-5. Inspector general -- Salary and budget.** -- The general assembly shall
2 annually set the salary of the inspector general and set the total budget for the office of the
3 inspector general.

4 **42-9.4-6. Rules and regulations.** -- The office shall, pursuant to the provisions of
5 chapter 42-35, the Administrative Procedures Act, promulgate rules and regulations which shall
6 govern its proceedings.

7 **42-9.4-7. Duties.** -- The inspector general shall supervise, coordinate and/or conduct
8 audit, criminal, civil and administrative investigations and inspections or oversight reviews, when
9 necessary, relating to programs and operations listed in section 42-9.4-1. The inspector general
10 shall review statutes and regulations relating to programs and operations listed in section 42-9.4-1
11 and shall determine if public bodies listed in section 42-9.4-1 are in compliance and shall make
12 recommendations concerning the effect of such statutes or regulations on the prevention and
13 detection of fraud, waste and abuse. The inspector general may recommend policies that will
14 assist in the prevention or detection of fraud, waste, abuse and mismanagement. The person in
15 charge of, or the governing body of any public body listed in section 42-9.4-7, may request the
16 assistance of the office of inspector general with respect to implementation of any reviews, audits,
17 and/or investigations as deemed appropriate and implement suggested policy or procedure
18 changes. In such events, the inspector general may assign personnel to conduct, supervise, or
19 coordinate such activity as deemed necessary and appropriate to perform his/her duties in a
20 diligent and prudent manner. The inspector general may recommend policies for the conduct,
21 supervision or coordination of relationship, between state and county agencies and other state and
22 local governmental agencies as well as federal governmental agencies and nongovernmental
23 entities with respect to all matters relating to the prevention and detection of fraud, waste, abuse
24 and mismanagement in or relating to any and all programs and activities of the State of Rhode
25 Island as listed in section 42-9.4-1.

26 **42-9.4-8. Inspection of records and papers – Investigations -- Subpoenas.** -- (a) The
27 inspector general, in carrying out the duties outlined in this chapter, shall have access to all
28 records, reports, audits, reviews, papers, books, documents, recommendations, correspondence,
29 including information relative to the purchase of services or anticipated purchase of services
30 from any contractor by any public body listed in section 42-9.4-1, and any other data and material
31 that is maintained by or available to any public body regardless of the media in which it is
32 maintained which is in any way related to the programs and operations with respect to the State of
33 Rhode Island, including any local town, municipality or city.

34 (b) The inspector general may request information, cooperation and assistance from any

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

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

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

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

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

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

31 (3) Such subpoena shall be served in the same manner as a subpoena for the production
32 of documents in civil cases issued on behalf of the State of Rhode Island, and all provisions of
33 law relative to said subpoena shall apply to a subpoena issued pursuant to this chapter. Any
34 justice of the superior court may, upon application by the inspector general, issue an order to

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

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

15 **42-9.4-9. Subpoena for witness testimony and for release of material evidence. -- (a)**

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

24 (b) The inspector general or anyone duly authorized by him/her shall serve such
25 subpoena or may designate a member of the office of the inspector general to serve it. Once the
26 subpoena is served, the serving officer shall annotate the time and date served, the person served
27 and the location of service.

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

32 Such witness, at the time of service of a subpoena, shall be notified of the matter under
33 investigation concerning which such witness will be required to testify. A subject of an
34 investigation is a person whose conduct is within the scope of the investigation and is suspected

1 of committing or being party to an offense under investigation. The failure to furnish such witness
2 with any notice or information required to be given by this section shall cause the issued
3 subpoena to be invalid.

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

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

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

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

34 **42-9.4-10. Compact – Investigation. --** (a) The inspector general must accept and may

1 investigate or audit complaints or information from any individual concerning the possible
2 existence of any activity constituting fraud, waste, abuse and mismanagement relating to
3 programs and operations as listed in section 42-9.4-1.

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

9 (c) Employees are protected under the "Rhode Island Whistleblowers' Protection Act,"
10 chapter 28-50 of the general laws.

11 **42-9.4-11. Reports to the attorney general or United States attorney.** -- In carrying
12 out his/her duties and responsibilities, the inspector general shall report to the attorney general,
13 the United States attorney or both whenever the inspector general has reasonable grounds to
14 believe there has been a violation of federal or state criminal law. The attorney general shall
15 institute appropriate proceedings in the furtherance of completing an investigation and, if
16 warranted, to refer a matter for prosecution.

17 The inspector general shall refer audit or investigative findings to the state ethics
18 commission, or to any other federal, state or local agency, which has an interest in said findings.

19 Any referrals made under this section shall not be made public.

20 **42-9.4-12. Civil actions.** -- The inspector general shall have the authority to institute a
21 civil recovery action if authorized by the attorney general. In any case where the inspector
22 general has discovered fraudulent acts and believes that civil recovery proceedings may be
23 appropriate, he/she shall refer the matter to the attorney general. The attorney general may
24 institute whatever proceedings he/she deems appropriate, may refer the matter to another state or
25 local agency, may authorize the initiation of appropriate civil proceedings by the inspector
26 general, may retain the matter for further investigation, or may remand the matter to the inspector
27 general for further investigation.

28 **42-9.4-13. Annual and interim reports.** -- (a) The office of inspector general shall, no
29 later than April 1st of each year, prepare a report summarizing the activities of the office of
30 inspector general for the prior calendar year. The office of inspector general may also prepare
31 interim reports. These reports shall be forwarded to the governor, lieutenant governor, attorney
32 general, secretary of state, general treasurer and the general assembly and shall be made available
33 to the public.

34 (b) The report shall include, but not be limited to: a description of significant problems in

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

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

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

21 **42-9.4-14. Confidentiality of records. --** All records of the office of inspector general
22 shall be confidential and shall not be public records, unless it is necessary for the inspector
23 general to make such records public in the performance of his/her duties.

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

28 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 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 purpose of preventing and detecting fraud, waste, abuse, and
3 mismanagement in the expenditure of public funds.

4 This act would take effect upon passage.

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