



SPONSOR: Rep. Kowalko & Rep. Michael Smith & Sen. Sokola
Reps. Baumbach, Lambert, Morrison, Ramone, Wilson-
Anton; Sens. Ennis, Hansen, S. McBride, Paradee,
Sturgeon

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 405

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE OFFICE OF THE INSPECTOR
GENERAL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part VIII, Title 29 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

Chapter 90E. Office of the Inspector General.

§ 9001E. Purpose.

In establishing the Office of the Inspector General, the General Assembly finds as follows:

(1) The prevention of fraud, waste, abuse, mismanagement, and corruption is necessary for Delaware residents
to have full confidence in their state government.

(2) An independent and nonpartisan Office of the Inspector General is necessary to provide oversight,
accountability, and transparency to the actions of state employees and state agencies.

(3) The Office of Inspector General shall protect the public interest and enhance public trust by conducting
investigations and holding agencies and officials accountable to all of the following, as applicable:

a. Oath of office.

b. Code of Conduct.

c. State law.

d. Other ethical and legal standards.

§ 9002E. Definitions.

For purposes of this chapter:

(1) “Business relationship” means that any of the following apply to the relationship between a state agency
and an individual or entity:

a. A financial interest, contract, or purchase.

b. A license or permit requiring the exercise of judgment or discretion by a state agency.

(2) “Inspector General” means the Office of the Inspector General, the individual appointed as the Inspector General, and the staff of the Office of Inspector General.

(3) “Records” means all records, accounts, reports, documents, correspondence, data, information, property, and any other physical or electronic material used by or belonging to a state agency or relating to a business relationship with a state agency.

(4) “State agency” means any office, department, board, commission, committee, school district, board of education, and all public bodies created by the Delaware Constitution or by an act of the General Assembly, except that “state agency” does not include any of the following:

a. A county or municipality.

b. A court.

c. The University of Delaware or Delaware State University.

§ 9003E. Inspector General; establishment.

(a) The Office of the Inspector General is hereby established as an independent and nonpartisan agency to investigate the management and operation of state agencies to determine whether there has been fraud, waste, abuse, mismanagement, corruption, or any other conduct that harms the public interest.

(b) The General Assembly shall make adequate appropriations to the Office of the Inspector General to enable effective operation and independence.

(c)(1) An Inspector General shall be appointed under § 9010E of this title and shall direct and supervise the work of the Office of the Inspector General.

(2) The following individuals may not be nominated for Inspector General until 3 years after the last day of the individual’s employment in the disqualifying position:

a. A member of the General Assembly.

b. A Cabinet Secretary, or individual of equivalent rank within the Executive Branch.

c. A division director, or individual of equivalent rank within the Executive Branch.

(d)(1) The Inspector General shall hire a Deputy Inspector General and qualified staff with education or experience in relevant areas such as investigations, law enforcement, auditing, or other forms of oversight or government evaluation.

(2) Within 3 years of hire, investigative staff employed by the Office of the Inspector General shall become certified by the Association of Inspectors General in at least 1 of the following fields:

a. Investigation.

52 b. Auditing.

53 c. Evaluation.

54 (e) The Inspector General may contract for services of technical experts, including legal counsel.

55 § 9004E. Inspector General; term, compensation.

56 (a) The Inspector General is appointed and confirmed under § 9010E of this title.

57 (b) The Inspector General shall serve a term of 5 years and is eligible for reappointment for no more than 2
58 additional terms, for a 15-year maximum period service.

59 (c) The Inspector General may only be removed from office if all of the following apply:

60 (1) There is cause for removal of the Inspector General under either of the following:

61 a. The State Employees', Officers' and Officials' Code of Conduct, subchapter I, of Chapter 58 of this
62 title.

63 b. Section 6 of Art. XV of the Delaware Constitution.

64 (2) The Inspector General's removal under paragraph (c)(1) of this section is initiated by a recommendation
65 from the Governor and is approved by two-thirds of the members of the Senate and two-thirds of the members of the
66 House of Representatives.

67 (d) In the event of a vacancy in both the position of the Inspector General and the Deputy Inspector General,
68 before the appointment of a successor Inspector General, the Governor may appoint any qualified individual to serve as
69 acting Inspector General.

70 § 9005E. Powers and duties.

71 (a) The Inspector General shall do all of the following:

72 (1) Investigate the management and operation of state agencies to determine if there has been fraud, waste,
73 abuse, mismanagement, corruption, or any other conduct that harms the public interest, whether through acts or
74 omissions, including all of the following:

75 a. Business relationships.

76 b. Retaliation against whistleblowers.

77 (2) Establish priorities for the Office.

78 (3) Maintain a statewide toll-free telephone number, a collect telephone number, a web site, e-mail address,
79 and a mailing address for the receipt of complaints and inquiries.

80 (4) Establish procedures to receive, investigate, and resolve complaints.

81 (5) Adopt and comply with rules, policies, and procedures necessary to implement this chapter.

(b) The Inspector General may work collaboratively with the Attorney General or the Auditor of Accounts for the purposes of efficiency and coordination.

§ 9006E. Investigative procedure.

(a)(1) The Inspector General may initiate an investigation or may act on receipt of a complaint. Complaints may be made by any individual or entity.

(2) The Inspector General may not investigate complaints from employees that relate to their employment relationship with the state agency, unless the complaint is directly related to fraud, waste, abuse, mismanagement, corruption, or any other conduct that harms the public interest under § 9006E(a)(1) of this title.

(b)(1) The Inspector General may decline to investigate a complaint as provided by the rules adopted under this chapter.

(2) If the Inspector General does not investigate a complaint, the Inspector General shall notify the complainant of the decision not to investigate the complaint and the reason for that decision.

(c) The Inspector General may refer a complainant, and others, to appropriate resources, agencies, or departments.

(d) The Inspector General may not levy a fee for the submission or investigation of a complaint.

(e) The Inspector General must remain neutral and impartial and may not act as an advocate for the complainant or for the state agency.

(f) The Inspector General and staff shall adhere to professional standards for initiating and conducting investigations, such as the Principles and Standards for Offices of Inspectors General promulgated by the Association of Inspectors General.

(g)(1) At the conclusion of an investigation of each complaint, the Inspector General must issue a public decision, including recommendations, on the merits of the complaint.

(2) The Inspector General must state its recommendations and reasoning if, in the Inspector General's opinion, the state agency should do any of the following:

a. Consider the matter further.

b. Modify or cancel an action.

c. Alter a rule, practice, or ruling.

d. Explain in detail the administrative action in question.

e. Rectify an omission.

(3) The public decision must not contain documents that are confidential under § 9008E of this title except that that if wrongful acts or omissions are found, the Inspector General shall describe the acts or omissions and identify in the reports the individuals who committed those acts or omissions.

(4) The Inspector General must communicate the decision as follows:

a. To the complainant.

b. To the state agency.

c. Published on the Inspector General's website.

d. If the investigation finds that wrongful acts or omissions occurred, to recipients of the annual report under § 9009E(a) of this title.

(h) If requested by the Inspector General, the state agency must, within the time specified, inform the Inspector General about any action taken on a recommendation or the reasons for not following a recommendation.

(i) If the Inspector General believes, based on the investigation, that there has been or continues to be a significant problem regarding fraud, waste, abuse, mismanagement, corruption, or any other conduct that harms the public interest, the Inspector General must report the finding to the Attorney General, Governor, and the members of the General Assembly.

§ 9007E. Access to state agencies and records.

(a) The Inspector General must have reasonable access to a state agency's records as necessary to conduct a full investigation of a complaint, including all of the following:

(1) Access to records in possession of a grantee or contractor.

(2) The opportunity to interview an employee or any other individual who may have knowledge relating to the complaint under investigation.

(b) The Inspector General has the right to inspect and copy all relevant information, records, or documents under subsection (a) of this section, that the Inspector General considers necessary in an investigation of a complaint under this chapter, and the state agency must assist the Inspector General in obtaining the necessary releases for those documents which are specifically restricted or privileged.

(c) Following notification from the Inspector General with a written demand for access to the state agency's records, the state agency must provide the Inspector General with access to the requested documentation not later than 20 business days after the Inspector General's written request for the records.

(d) The Inspector General may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to a matter under investigation by the Inspector General. If a person refuses to obey a subpoena issued by the Inspector General, then the Inspector General may petition a court of competent jurisdiction for an

order requiring that person to appear before the Inspector General to give testimony, produce evidence, or both, relating to the matter under investigation.

(e) The Inspector General shall have the authority to administer or take from any person an oath, affirmation, or affidavit, whenever necessary to perform the Inspector General's duties.

§ 9008E. Confidentiality.

(a) The Inspector General shall establish confidentiality rules and procedures for all information maintained by the Office.

(b) The Inspector General shall treat all matters under investigation as confidential, including the identity of any person who files a complaint or provides information regarding an investigation, except as far as disclosures may be necessary to perform the duties of the Inspector General and to support any recommendations resulting from an investigation.

(c) On receipt of information that by law is confidential or privileged, the Inspector General shall maintain the confidentiality of the information and may not further disclose or disseminate the information, except as provided under subsection (e) of this section or other applicable state or federal law or as required under § 9006E(g)(3) of this title.

(d) All investigative records, including communications that include the investigative record and personnel matters, are confidential and are exempt from public disclosure under the Freedom of Information Act, Chapter 100 of this title.

(e) To the extent the Inspector General reasonably believes necessary, the Inspector General may reveal information obtained in the course of an investigation for any of the following purposes:

(1) To prevent reasonably certain death or substantial bodily harm.

(2) To prevent the commission of a crime.

(3) To report an alleged commission of a crime to the appropriate law-enforcement agency.

§ 9009E. Report.

(a) Beginning January 1, 2023, the Inspector General shall produce an annual report, published on the Inspector General's website, submitted to the Governor, Attorney General, members of the General Assembly, with copies to the Director and the Librarian of the Division of Research of Legislative Council and the Delaware Public Archives.

(b) The annual report shall contain all of the following regarding the Inspector General's work during the prior year:

(1) The number of complaints received, the number of investigations started, and the number of investigations completed.

(2) A description of significant investigations completed.

(3) Any outstanding or unresolved concerns or recommendations.

Section 2. Amend Part VIII, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9010E. Inspector General; Selection Panel.

(a)(1) When the position of Inspector General is vacant or the Inspector General's current term is expiring, the Secretary of State shall do all of the following:

a. Convene the Selection Panel.

b. Provide reasonable and necessary support staff and materials for the Selection Panel to carry out its mission.

(2) The Selection Panel shall submit 3 names of individuals to the Governor for consideration for appointment as Inspector General based on each individual's demonstrated integrity, leadership, and experience in governmental oversight and investigations.

(b) The Selection Panel is comprised of the following members, or a designee selected by the member serving by virtue of position:

(1) The Attorney General, who serves as chair.

(2) A State Representative from the majority caucus, appointed by the Speaker of the House of Representatives.

(3) A State Senator from the majority caucus, appointed by the President Pro Tempore of the Senate.

(4) A State Representative from the minority caucus, appointed by the House Minority Leader.

(5) A State Senator from the minority caucus, appointed by the Senate Minority Leader.

(6) The Secretary of State.

(7) The President of the Delaware State Bar Association.

(8) The President of the Delaware Association of Chiefs of Police.

(9) The President of the Delaware State Conference of Branches NAACP.

(10) The President of the League of Women Voters of Delaware.

(11) The President of the Delaware Coalition for Open Government.

(12) Three members of the public with experience related to open government, appointed by the Governor.

(c)(1) A quorum of the Selection Panel is a majority of its members.

(2) Official action by the Selection Panel requires the approval of a quorum of the Selection Panel.

(3) The Selection Panel may adopt rules necessary for its operation.

(4) The chair of the Selection Panel may invite individuals with relevant expertise to participate in Selection Panel discussions.

(5) A member of the Selection Panel with the ability to designate another individual to attend a Selection Panel meeting must provide the designation in writing to the chair. An individual attending a meeting for a member as a designee has the same duties and rights as the member.

(6) The Selection Panel is a public body under the Freedom of Information Act, Chapter 100 of this title.

(d) The Governor shall select 1 nominee from the 3 names provided by the Selection Panel to be appointed Inspector General and submit the nominee for confirmation by the Senate.

Section 3. This Act is effective immediately and is to be implemented as follows:

(1) Section 2 of this Act, immediately.

(2) Section 1 of this Act, no later than March 1, 2023.

SYNOPSIS

This Act establishes an independent and nonpartisan Office of the Inspector General (OIG) and the position of the Inspector General. The OIG will protect the health and safety of Delaware residents, assist in the recovery of misspent or inappropriately paid funds, and strengthen government integrity and the public trust in government operations by doing all of the following:

1. Investigate the management and operation of state agencies to determine if there has been waste, fraud, abuse, mismanagement, corruption, or other conduct that is harmful to the public interest.
2. Coordinate with other agencies, recommend corrective actions and statutory revisions, and, if necessary, make referrals to law enforcement.
3. Provide reports to the Governor, Attorney General, and General Assembly, and these reports will be available to the public on the OIG website.

The Inspector General will be selected through a process that requires a Selection Panel to provide 3 names to the Governor for consideration. The Governor will select a nominee from these 3 names for appointment as Inspector General and submit the nominee for confirmation by the Senate.

Under this Act, the Selection Panel work must begin upon enactment and the work of the Office of the Inspector General must begin by March 1, 2023.