SPONSOR: Sen. Sturgeon & Sen. Townsend & Sen. Hansen &
Sen. Pettyjohn & Rep. K. Williams &
Rep. Michael Smith & Rep. Baumbach & Rep. Morrison
& Rep. Wilson-Anton
Sens. Huxtable, Lockman, Pinkney, Sokola; Reps.
K. Johnson, Romer

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 21

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO OFFICE OF 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 Inspector General.

§ 9001E. Purpose.

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

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

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

(3) The Office of Inspector General shall protect the public interest and enhance public trust by conducting investigations and holding agencies and individuals 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.

(4) The Inspector General will work collaboratively with other investigative and law-enforcement agencies for the purposes of efficiency, coordination, and avoiding duplication of work.

§ 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 Inspector General ("Office"), the individual appointed as the Inspector General, and the staff of the Office of Inspector General.

(3) "Public office" means as defined in § 8002 of Title 15.

(4) "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.

(5) "State agency" means any office, department, board, commission, committee, school district, 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.

§ 9003E. Inspector General; establishment.

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

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

(c)(1) An Inspector General shall be nominated, appointed and confirmed under § 9010E of this title and shall direct and supervise the work of the Office of 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 any of the following disqualifying positions:

a. A statewide public office.

b. A member of the General Assembly.

c. A Cabinet Secretary, or individual of equivalent rank within the executive branch.

d. A division director, or individual of equivalent rank within the executive branch, except that this paragraph (c)(2)d. does not apply to a Deputy Attorney General.

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

(2) The Inspector General may hire a staff attorney.

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

a. Investigation.

b. Auditing.

c. Evaluation.

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

§ 9004E. Inspector General; term, compensation.

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

(b)(1) The Inspector General shall serve a term of 5 years and is eligible for reappointment.

(2)a. At least 6 months before the end of a term, the Inspector General shall provide notice to the Secretary of State stating whether or not the Inspector General is seeking reappointment.

b. Before resigning during a term, the Inspector General shall provide written notice to the Governor, Secretary of State, President Pro Tempore of the Senate, and Speaker of the House of Representatives.

(c)(1) Under Section 5 of Article XV of the Delaware Constitution, an individual serves as Inspector General until the process under § 9010E of this title is completed and the Senate confirms the individual's reappointment or confirms a new individual as Inspector General.

(2) Under Section 4 of Article XV of the Delaware Constitution, the amount of the Inspector General's salary may not be reduced during the Inspector General's term of office.

(d) The Inspector General may only be removed from office as follows:

(1) Mandatory removal by the Governor upon conviction of misbehavior in office or any infamous crime under Section 6 of Article XV of the Delaware Constitution.

(2) For cause under the State Employees', Officers' and Officials' Code of Conduct, subchapter I of Chapter 58 of this title.

(3) The Inspector General's removal under paragraph (d)(2) of this section must be initiated by a recommendation from the Governor and approved by a two-thirds vote of the members elected to each house of the General Assembly

(e) The Inspector General must resign from this position before becoming a candidate for public office. The Inspector General is deemed to have resigned from this position when any of the following occur:

(1) The individual files to be a candidate for public office.

(2) A candidate committee is formed on behalf of the individual.

(3) The individual announces their candidacy for public office.

(f) If both the position of the Inspector General and the Deputy Inspector General are vacant, the Governor may appoint a qualified individual to serve as acting Inspector General until the appointment of an Inspector General under § 9010E of this title.

§ 9005E. Powers and duties.

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

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

a. Business relationships.

b. Retaliation against whistleblowers.

(2) Establish priorities for the Office.

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

(4) Establish procedures to receive, investigate, and resolve complaints, including recommending whether disciplinary action or further investigation by appropriate federal, state, or local agencies is warranted and taking further action as appropriate.

(5) Pursue civil actions on behalf of this State for violations of laws or policies identified through investigations.

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

(b) The Inspector General shall work collaboratively, including through memoranda of understanding, with all of the following for the purposes of efficiency, coordination, and avoiding duplication of work:

(1) The Attorney General.

(2) The Auditor of Accounts.

(3) The State Public Integrity Commission.

(4) Other investigative or law-enforcement agencies.

§ 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, mismanagement, corruption, or any other abuse of governmental resources that harms the public interest under § 9005E(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 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 the investigation of each complaint, the Inspector General shall issue a public decision, including recommendations, on the merits of the complaint.

(2) If the complaint is about an employee of an agency or contractor and the investigation found no evidence of wrongdoing, the public decision may not contain the name of the individual investigated without the written permission of that individual.

(3)a. Before announcing a decision, the Inspector General shall do all of the following:

1. Consult with the state agency, and, as appropriate, the state employee or contractor thereof, regarding the decision.

2. Provide an opportunity for each person contacted under paragraph (g)(3)a. of this section to respond to the decision.

b. Paragraph (g)(3)a. of this section does not allow a person consulted by the Inspector General before an announcement to hinder, prevent, or delay the Inspector General's announcement of a decision.

(4) The public decision must not contain information that is confidential under § 9008E of this title, unless any of the following apply:

a. The information is necessary to support the decision and any recommendations resulting from an investigation.

b. If wrongful acts or omissions are found, the Inspector General shall describe the acts or omissions and identify in the decision the individuals who committed those acts or omissions.

(5) The Inspector General must provide the basis for a recommendation that a state agency do any of the following:

a. Consider the matter further.

b. Modify or cancel an action.

c. Alter a rule, practice, or decision.

d. Explain in detail the administrative action in question.

e. Rectify an omission.

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

a. To the complainant.

b. To the state agency investigated, and as appropriate, the employee or contractor investigated.

c. On the Inspector General's website.

(7) If the investigation finds that there has been or continues to be a significant problem regarding fraud, waste, mismanagement, corruption, or any other abuse of governmental resources that harms the public interest, the Inspector General must communicate the decision to the Department of Justice and the other 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 evidence of a crime, the Inspector General must report the finding to the Department of Justice and any other appropriate law-enforcement agency.

(j) If the Department of Justice does not file a civil action to address the problem reported under paragraph (g)(7) of this section, the Inspector General may pursue a civil action for a violation of law or policy.

§ 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, with or without notice, 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. 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 by the Inspector General in 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 5 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, 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) All investigative records, including communications that include the investigative record, are confidential and are exempt from public disclosure under the Freedom of Information Act, Chapter 100 of this title.

(b)(1) The Inspector General shall treat all matters under investigation as confidential and may not further disclose or disseminate information except as necessary to act under subsection (d) of this section.

(2) The Inspector General shall maintain as confidential the identity of any of the following:

a. A person who files a complaint.

b. A person who provides information regarding an investigation,

c. An employee whose conduct was in compliance with an agency or contractor's policies and procedures at the time of the conduct, if the employee was not responsible for establishing that policy or procedure.

(c) If the Inspector General receives information that is confidential or privileged under other law, the Inspector General shall maintain the confidentiality of the information and may not further disclose or disseminate the information except as necessary to act under subsection (d) of this section.

(d) The Inspector General may reveal information obtained in the course of an investigation to the extent the Inspector General reasonably believes necessary to do any of the following:

(1) Prevent reasonably certain death or substantial bodily harm.

(2) Prevent the commission of a crime.

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

(4) Perform the duties of the Inspector General, including to do any of the following:

a. Collaborate with agencies under § 9005E(b) of this title.

b. Contract for services of technical experts under § 9003E(e) of this title.

c. Support the decision and any recommendations resulting from an investigation under § 9006E of this title.

d. File a civil action under § 9006E(j) of this title.

(5) Comply with a court order or subpoena.

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

§ 9009E. Report.

(a) Beginning January 1, 2026, the Inspector General shall produce an annual report, published on the Inspector General's website, and submitted to the Governor, Attorney General, and 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 must 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; confirmation.

(a)(1) The Secretary of State shall convene the Selection panel as follows:

a. At least 90 days before the Inspector General's current term is expiring.

b. As soon as possible when the position of Inspector General becomes vacant during a term or if the Inspector General submits notice of resignation.

(2) The Selection Panel shall submit the names of 3 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.

(3) The Secretary of State shall provide reasonable and necessary support staff and materials for the Selection Panel.

(b) The Selection Panel is comprised of the following members, or a designee selected by a 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 of the 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 to the Senate for confirmation by the majority of the members elected to the Senate.

Section 3. Amend § 2515, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2515. Exceptions.

(b) Notwithstanding § 2507 of this title, the provisions of this chapter relating to the supplying of legal advice, counsel, ~~services~~ services, and representation in proceedings ~~shall~~ do not apply to ~~the~~ any of the following:

(1) The State Public Integrity ~~Commission established pursuant to~~ Commission, Chapter 58 of this title.

(2) The Office of Inspector General, Chapter 90E of this title.

Section 4. This Act is effective immediately and is to be implemented as follows:

(1) For Section 2 of this Act, immediately. Notwithstanding § 9010E(a)(1)a. of Title 29, the Secretary of State shall convene the Section Panel no later than 60 days after its enactment into law.

(2) For Sections 1 and 3 of this Act, the earlier of the following:

a. Upon the appointment and confirmation of an Inspector General under § 9010E(d) of Title 29.

b. March 1, 2025.

SYNOPSIS

Like Senate Bill No. 21, Senate Substitute No. 1 for Senate Bill No. 21 {this Act) establishes an independent and nonpartisan Office of the Inspector General (OIG) and the position of the Inspector General.

Under this Act, the OIG would be unique in state government as a non-political agency with a sole mission to investigate and prevent fraud, waste, mismanagement, corruption, and other abuse of governmental resources. 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. Investigating the management and operation of state agencies, including the General Assembly, to determine if there has been waste, fraud, abuse, mismanagement, corruption, or other abuse of governmental resources that is harmful to the public interest.
2. Coordinating with other investigative and law-enforcement agencies, including the Attorney General and the Auditor of Accounts (Auditor).
3. Recommending corrective actions and statutory revisions, and, if necessary, make referrals to other law-enforcement agencies.
4. Providing 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 not duplicate the work of the Auditor, Attorney General, Public Integrity Commission, or other investigative or law-enforcement agencies and will work collaboratively, including through memoranda of understanding, with these agencies for the purposes of efficiency and coordination. Specifically, the Inspector General can be distinguished from these agencies as follows:

• Under the generally accepted government auditing standards in the Yellow Book produced by the U.S. Government Accountability Office, both financial and performance audits are only designed to detect fraud, illegal activity, noncompliance, abuse, and waste. An auditor determines whether the subject matter meets criteria, reaches reasonable

assurance, and follows directive standards. If an auditor detects fraud or other bad behavior, they must report it to an investigation agency.

• The OIG will be an entirely independent investigation agency, charged with gathering evidence to identify the individual responsible for the bad behavior identified through an audit and prove that it occurred. For complaints the received from other sources, the OIG will investigate to determine if there is or has been bad behavior. In addition to proving instances of bad behavior, these investigations may also prove that an allegation is false or incorrect.

• The OIG will not duplicate the work of existing ombudsperson offices because the OIG is primarily concerned with detecting and preventing fraud, waste, mismanagement, corruption, and abuse of governmental resources while ombuds programs are concerned with violations of the rights and treatment of specific populations.

• If the OIG believes, based on an investigation, that there has been or continues to be significant problem regarding fraud, waste, mismanagement, corruption, or evidence of a crime, the Inspector General must report the finding to the Department of Justice (DOJ). If the DOJ does not take action on a referral, the OIG may pursue a civil action on behalf of the State.

• The OIG will be unique in State government because the Inspector General is not elected and will be an entirely independent agency. 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 to the Senate for confirmation. Once confirmed, the Inspector General serves a term of 5 years. In addition, the DOJ is not responsible for providing legal advice, counsel, services, and representation to the OIG.

In other states, the financial impact of investigations by the Office of Inspector General has exceeded the annual budget for that office by millions of dollars. Some examples of conduct that have been identified in states where an Inspector General has responsibilities similar to those under this Act include the following:

• In Georgia, an agency administrator who faked multiple pregnancies, receiving 265 hours of leave for which she was not otherwise eligible to receive.

• Massachusetts has recovered more than $245,000 from 13 former troopers within the State Police for overtime pay they received for hours they did not actually work.

• In Indiana, a Department of Child Services worker was found to have falsified case notes regarding child welfare assessments.

• In Louisiana, state agencies were found to have wasted more than $500,000 in non-refundable airline tickets that were allowed to expire and lose value.

Under this Act, the selection process for the Inspector General begins upon enactment and the work of the Office of the Inspector General must begin upon the appointment and confirmation of an Inspector General or March 1, 2025, whichever occurs earlier.

Senate Substitute No. 1 for Senate Bill No. 21 differs from SB 21 as follows:

1. Revises § 9001E(4) of Title 29 so that the General Assembly's purpose in establishing the OIG aligns with the requirement under § 9005E(b) of Title 29 that the Inspector General work collaboratively with other investigative and law-enforcement agencies, not just the Auditor, for the purposes of efficiency, coordination, and avoiding duplication of work.

2. Clarifies that there is not a preference under § 9003E(d)(1) of Title 29 for OIG staff to have experience with a law-enforcement agency.

3. Adds paragraph (d)(5) to § 9008E of Title 29 to clarify that the Inspector General may reveal information to comply with a court order or subpoena.

Author: Senator Sturgeon