



SPONSOR: Rep. Michael Smith & Rep. Ramone  
Reps. Dukes, Gray, D. Short

HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE BILL NO. 370

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

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

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

**Chapter 106. Office of the State Inspector General**

**§ 10601. Short Title**

This Chapter may be cited as the Delaware State Inspector General Act.

**§ 10602. Legislative findings, intent.**

(a) The General Assembly believes that it is desirable to have an independent State Inspector General to investigate complaints of waste, fraud, abuse or corruption regarding state employees or state agencies; and

(b) The General Assembly believes that an independent State Inspector General selected, by the governor and confirmed by the Senate, will instill greater public confidence in the integrity and operation of state government.

**§ 10603. Definitions.**

For the purposes of this chapter, the following definitions shall apply:

(1) "Abuse" means the intentional, wrongful, or improper use or destruction of state resources.

(2) "Agency" shall mean any department, division, board, authority, bureau, commission, or council in the executive branch of state government.

(3) "Corruption" means an intentional act of fraud, waste, or abuse or the use of public office for personal or pecuniary gain for oneself or another.

(4) "Employee" means any person in the executive branch of state government who is employed by an agency, including agency heads, directors, and commissioners.

(5) "Fraud" means an act of intentional or reckless deceit to mislead or otherwise deceive.

(6) "Inspector General" means the inspector general created by this article or his or her designee.

(7) "Office" means the Office of the Inspector General created by this article.

(8) "Officer" means any person appointed to any agency, department, division, board, authority, bureau, commission, or council in the executive branch of state government.

(9) "Official" means any person elected or appointed to office within the executive branch of government.

(10) "Police officer" means an officer who is a sworn member the staff of the Office of the Inspector General, is authorized to enforce all laws of the State of Delaware, and has complied with the minimum training and certification standards set forth and authorized by the Council on Police Training (Title 11, Chapter 84).

(11) "Waste" means a reckless or grossly negligent act that causes state funds to be spent in a manner that was not authorized or represents significant inefficiency and needless expense.

#### **§ 10604. Selection, Confirmation, Removal, Term of Office.**

(1) The governor shall nominate a candidate to serve as inspector general. The inspector general shall be selected without regard to political affiliation and based on integrity, capability for strong leadership, and his or her ability to understand and apply the principles of accounting, auditing, financial analysis, law, management analysis, public administration, investigation, and criminal justice administration.

(2) The Senate must confirm the nomination. An inability to secure a majority vote in favor of the confirmation will result in the rejection of the candidate and the requirement for the governor to select another for submission.

(3) The term of office will begin on the day of the successful Senate confirmation.

(4) In the event of a vacancy for any reason, except the expiration of the term of office, the governor shall appoint a successor to serve the remainder of that term. The Senate must confirm the appointment within six months of the appointment being made. An inability to secure a majority vote in favor of the appointee will result in the rejection of the appointee and require the governor to appoint another, subject to the same confirmation process.

(5) The inspector general shall be eligible to serve one or more successive terms.

(6) Each term of office shall be five years.

(7) The governor shall have the authority to remove the inspector general from office for good cause after providing to the inspector general written notice. Removal of the inspector general shall be effective upon the date upon which such notice is signed by the governor or, at the discretion of the governor, upon any subsequent date specified in the notice.

#### **§ 10605. Purpose.**

(1) There is created the Delaware Office of the Inspector General, for which purpose shall be to investigate the management and operation of executive branch agencies. The inspector general is charged with investigating complaints of waste, fraud, abuse or corruption regarding state employees or state agencies.

53           (2) The jurisdiction, authorization, powers, and duties granted to the office in this article shall be in addition to,  
54           and not in contravention of, any and all jurisdiction, authorization, powers, and duties of the Attorney General, the State  
55           Auditor, or any other state or local investigatory or police agency.

56           (3) The inspector general shall have jurisdiction over any official, officer, employee, department, division, bureau,  
57           board, commission, council, or agency in the executive branch of state government.

58           (4) The inspector general shall establish the organization structure appropriate to carrying out the responsibilities  
59           and functions of the office and shall have the power to employ, promote, and remove such assistants, employees, and  
60           personnel as deemed necessary for the efficient and effective administration of the office.

61           **§ 10606. Duties.**

62           The inspector general shall have the following duties:

63           (1) Receive and investigate complaints from any source alleging fraud, waste, abuse, or corruption that have been  
64           committed or is being committed against an agency of the state;

65           (2) Investigate acts that may constitute violations committed by officers, officials, or employees of agencies  
66           including, but not limited to, those offenses defined in Title 11, Chapter 5, Part A (Bribery and Improper Influence) and  
67           Part B (Abuse of Office);

68           (3) Investigate public officers alleged to have willfully and intentionally violated the terms of his or her oath of  
69           office;

70           (4) Investigate claims of retaliation, in violation of Title 19, Chapter 17 (Whistleblowers' Protection) or § 10607  
71           (6) of this Act, against individuals making good-faith reports of wrongdoing to the office of the inspector general;

72           (5) Report suspected acts of fraud, waste, abuse, or corruption against or within an agency to the governor and, as  
73           appropriate, other state or federal entities with jurisdiction over the matter;

74           (6) Upon conclusion of an investigation that results in a finding of fraud, waste, abuse, or corruption, issue a report  
75           or letter to the office of the governor and to the public. Any report disclosed by the Office of the Inspector General  
76           pursuant to this section may, at the discretion of the office, redact the confidential information of complainants and  
77           witnesses and other facts that, if disclosed, might compromise the complainant or witness. The office may also redact any  
78           information that could potentially compromise a pending criminal investigation known to the inspector general;

79           (7) The office of the inspector general may instruct agencies on the detection and prevention of fraud, waste,  
80           abuse, and corruption; conduct evaluations and audits of relevant agency policies and procedures implicated by any  
81           investigation; and create a remedial action plan to prevent recurrences of fraud, waste, abuse, and corruption;

(8) Close an investigation when the office concludes there is insufficient evidence that a violation has occurred.  
Closure by the office shall not bar the office from reopening the investigation if later circumstances warrant it;

(9) Act as a liaison with outside agencies and agencies of the government of the United States to promote  
accountability, integrity, and efficiency in state government;

(10) Conduct special investigations and management reviews of agencies at the request of the governor; and

(11) The office may act on requests submitted by agency heads or made through a concurrent resolution passed by  
the General Assembly that are consistent with this article and that involve or concern the management, operation, or  
personnel of agencies;

(12) Other duties assigned by the governor that are consistent with this article and that involve or concern the  
management, operation, or personnel of agencies;

(13) Conduct joint investigations and projects with other oversight or law enforcement agencies.

**§ 10607. Office Authority and Requirements Imposed on Agencies.**

(1) Agencies shall cooperate with any investigation conducted pursuant to this article.

(2) In any agency where fraud, waste, abuse, or corruption is detected, the agency shall take remedial steps to  
prevent recurrences of similar conduct, including the implementation of the remedial action plan drafted by the office.

(3) The inspector general shall have access to all state records needed for discharging its duties pursuant to this  
article.

(4) The inspector general shall be authorized to enter upon the premises of any agency at any time, without prior  
announcement, if necessary for the successful completion of an investigation. In the course of an investigation, the  
inspector general shall be authorized to question any official, officer, or employee serving in the agency and may inspect  
and copy any books, records, or papers in the possession of the agency, taking care to preserve the confidentiality of  
information contained in responses to questions or the books, records, or papers that are made confidential by law.

(5) The knowing failure of any official, officer, or employee to comply with an investigation made pursuant to this  
article or the knowing provision of false information during an investigation may be cause for discipline, up to and  
including termination by the agency, so long as such official, officer, or employee is subject to termination or other  
discipline by such agency.

(6) No agency, officer, or official shall take action against an official, officer, or employee for disclosing or  
threatening to disclose the existence of any activity constituting waste, fraud, abuse, or corruption to the inspector general,  
unless the disclosure or threatened disclosure was made with knowledge that the disclosure was false or was made with  
willful disregard for its truth or falsity.

(7) In performing any investigation authorized by this article, the inspector general shall be authorized to administer oaths, examine witnesses under oath, and issue any subpoenas necessary to compel the attendance of witnesses and the production of all books, records, papers, and tangible items that constitute or contain evidence which the inspector general finds reasonably relevant or material to the investigation.

#### **§ 10608. Records Disclosure**

Inspector general audit and investigation reports shall be public records to the extent that they do not include information that has been made confidential and exempt from release to the public. During the course of audit and investigation activities, all records will be considered deliberative in process and not available for outside review. Names and identities of individuals making complaints and information protected as confidential under Delaware law will not be disclosed without the written consent of the individual, unless required by law or judicial processes. Similarly, the inspector general shall maintain the confidentiality of any public records that are made confidential by law and shall be subject to the same penalties as the custodian of those public records for violating confidentiality statutes. Overall, efforts will be made to protect the privacy

of individuals or employees whenever possible without interfering in the judicial or administrative processes initiated to protect the public.

#### **§ 10609. Reporting Office Activities**

(1) The inspector general will report the findings of the office's work to the head of the investigated/audited agency, to the governor, and to the public. The inspector general shall also report criminal investigative matters to the appropriate law enforcement agencies.

(2) The office shall immediately report to the head of the agency involved whenever the inspector general becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the agency or interference with operations of the office of inspector general. The office of the inspector general shall transmit any such report to the governor and the leaders of each of the four caucuses of the Delaware General Assembly within seven calendar days, together with a report by the agency head containing any comments deemed appropriate.

(3) Within 60 days of the end of each fiscal year, the inspector general shall issue an annual report that separately lists audit and review reports and other investigative or assistance efforts completed during the fiscal year. The report shall describe accomplishments of the office of inspector general. Copies of the report shall be provided to the governor, all state legislators, members of the media, and the public.

#### **§ 10610. Issuance of Subpoenas.**

(1) In exercising its authority to issue subpoenas, the following parameters shall apply:

(a) Service of any subpoena issued under this article shall be made by any designated person.

(b) Service upon a person may be made by personal delivery of the subpoena to that person.

(c) Subpoenas may also be served upon a person by registered or certified mail and the return receipt shall constitute prima facie proof of service.

(d) Service upon a person may also be made by serving his or her counsel of record.

(e) Service may be made upon a domestic or foreign corporation by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

(f) A subpoena requiring the attendance of a witness may be served at any place within this state.

(g) In the case of a refusal to obey any issued subpoena, the inspector general or his or her designee may request that the attorney general petition the superior court within any jurisdiction where the investigation is carried on, where the subpoenaed person resides, or where the subpoenaed person carries on business or may be found to compel compliance with the subpoena. Upon the filing of the petition, the court shall enter an order directing the person to appear before the court at a specified time and place and then and there show cause why he or she has not attended, answered questions under penalty of perjury, or produced the requested items as required. If it appears to the court that the subpoena was regularly issued by the inspector general, the court shall enter an order that the person named in the subpoena appear at the time and place fixed in the order and answer questions under penalty of perjury or produce the requested items as required. Upon failure to obey the order, the person shall be subject to contempt of court. All process in any such case may be served at any place within this state. nothing in this code section limits or alters a person's existing rights or protections under state or federal law.

#### **§ 10611. Employment of Police Officers.**

(1) For the purposes of this article, the inspector general shall have the authority to employ police officers.

(2) Persons employed full-time or part-time for the purpose of conducting potential criminal investigations under this article shall be certified police officers and shall have all the powers of a certified police officer of this state including, but not limited to, the power to obtain, serve, and execute search warrants. Officers employed by the Office of Inspector General shall comply with the minimum training and certification standards set forth and authorized by the Council on Police Training (Title 11, Chapter 84).

#### **§ 10612. Quality Review**

171           Audits, investigations, inspections and reviews shall be subject to quality assurance reviews by an appropriate  
172 professional non-partisan objective group every three years. A copy of the written report resulting from this review shall be  
173 made available to the public.

174           Section 2. This Act shall become effective 180 days after enactment and the specific appropriation of funds for  
175 such purposes.

#### SYNOPSIS

          This Act seeks to establish the Office of State Inspector General in Delaware.

          The governor would nominate a candidate to serve as inspector general, with the Senate needing to confirm the nomination. The term of office for the post would be five years.

          The inspector general created under this act would be charged with investigating complaints of waste, fraud, abuse or corruption regarding state employees or state executive branch agencies.

          State agencies would be required to cooperate with any investigation conducted by the office of inspector general, including full access to the personnel, records, and the premises under agency control. The inspector general would have subpoena powers and would employ police officers for the purpose of conducting potential criminal investigations.

          The office of inspector general would be mandated to share general audit and investigation reports with the public, excluding only that information needed to comply with Delaware confidentiality laws or which might compromise an ongoing criminal investigation.

          Audits, investigations, inspections and reviews conducted by the office of inspector general would be subject to independent quality assurance reviews every three years, with the results shared with the public.

          This Act would become effective 180 days after it is enacted and upon appropriate funding being budgeted for the office's operations.