S T A T E O F N E W Y O R K

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I N S E N A T E

March 9, 2012

Introduced by Sens. PARKER, ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to establishing the office of the law enforcement inspector general

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The executive law is amended by adding a new article 11-A to read as follows:

ARTICLE 11-A

OFFICE OF THE LAW ENFORCEMENT INSPECTOR GENERAL

SECTION 232. JURISDICTION.
233. ESTABLISHMENT AND ORGANIZATION.
234. DEFINITIONS.
235. POWERS.
236. DISCLOSURE OF INFORMATION.
237. FUNCTIONS AND DUTIES.
238. REPORTS.

S 232. JURISDICTION. THIS ARTICLE SHALL, SUBJECT TO THE LIMITATIONS CONTAINED HEREIN, CONFER UPON THE OFFICE OF THE LAW ENFORCEMENT INSPECTOR GENERAL JURISDICTION OVER ALL COVERED AGENCIES. FOR THE PURPOSES OF THIS ARTICLE "COVERED AGENCY" SHALL INCLUDE ALL STATE AND LOCAL GOVERNMENT LAW ENFORCEMENT AND INTELLIGENCE AGENCIES, INCLUDING THE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES, ENGAGED IN INTELLIGENCE OPERATIONS.

S 233. ESTABLISHMENT AND ORGANIZATION. 1. THERE IS HEREBY ESTABLISHED THE OFFICE OF THE LAW ENFORCEMENT INSPECTOR GENERAL IN THE EXECUTIVE DEPARTMENT. THE HEAD OF THE OFFICE SHALL BE THE INSPECTOR WHO SHALL BE APPOINTED BY THE GOVERNOR, BY AND WITH THE ADVISE AND CONSENT OF THE SENATE.

2. THE INSPECTOR SHALL HOLD OFFICE UNTIL THE END OF THE TERM OF THE GOVERNOR BY WHOM HE OR SHE WAS APPOINTED AND UNTIL HIS OR HER SUCCESSOR IS APPOINTED AND HAS QUALIFIED.

3. THE INSPECTOR SHALL REPORT DIRECTLY TO THE GOVERNOR.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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4. SUCH PERSON APPOINTED AS INSPECTOR SHALL, UPON HIS OR HER APPOINTMENT, HAVE NOT LESS THAN TEN YEARS PROFESSIONAL EXPERIENCE IN AREAS OF LAW ENFORCEMENT AND LAW ENFORCEMENT TRAINING, PROVIDED THE EXPERIENCE INVOLVES EXPERTISE IN INTELLIGENCE OPERATIONS.

5. SUCH PERSON APPOINTED AS INSPECTOR SHALL BE SUBJECT TO A SECURITY CLEARANCE INVESTIGATION BY A FEDERAL GOVERNMENT AGENCY AUTHORIZED TO PERFORM SUCH INVESTIGATIONS.

6. THE SALARY OF THE INSPECTOR SHALL BE ESTABLISHED BY THE GOVERNOR WITHIN THE LIMIT OF FUNDS AVAILABLE THEREFOR.

S 234. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "INSPECTOR" SHALL MEAN THE LAW ENFORCEMENT INSPECTOR GENERAL CREATED BY THIS ARTICLE.

2. "INTELLIGENCE OPERATIONS" SHALL MEAN ANY INVESTIGATIVE LAW ENFORCEMENT OPERATION, INCLUDING BUT NOT LIMITED TO, SENSITIVE OPERATION PLANS, SECURITY ACTIVITIES, INTELLIGENCE MATTERS, COUNTERINTELLIGENCE MATTERS AND ONGOING CRIMINAL INVESTIGATIONS.

S 235. POWERS. THE INSPECTOR SHALL HAVE THE POWER TO:

1. SUBPOENA AND ENFORCE THE ATTENDANCE OF WITNESSES;

2. ADMINISTER OATHS OR AFFIRMATIONS AND EXAMINE WITNESSES UNDER OATH;

3. REQUIRE THE PRODUCTION OF ANY BOOKS AND PAPERS DEEMED RELEVANT OR MATERIAL TO ANY INVESTIGATION, EXAMINATION OR REVIEW;

4. APPOINT SUCH DEPUTIES, DIRECTORS, ASSISTANTS AND OTHER OFFICERS AND EMPLOYEES AS MAY BE NEEDED FOR THE PERFORMANCE OF HIS OR HER DUTIES AND MAY PRESCRIBE THEIR DUTIES AND FIX THEIR COMPENSATION WITHIN THE AMOUNTS APPROPRIATED THEREFOR;

5. SOLICIT, RECEIVE AND INVESTIGATION COMPLAINTS RELATED TO FRAUD, CORRUPTION AND ABUSE WITHIN A COVERED AGENCY;

6. NOTWITHSTANDING ANY LAW TO THE CONTRARY, EXAMINE AND COPY OR REMOVE DOCUMENTS OR RECORDS OF ANY KIND PREPARED, MAINTAINED OR HELD BY ANY COVERED AGENCY. THE REMOVAL OF RECORDS SHALL BE LIMITED TO THOSE CIRCUMSTANCES IN WHICH A COPY THEREOF IS INSUFFICIENT FOR AN APPROPRIATE LEGAL OR INVESTIGATIVE PURPOSE, PROVIDED THAT IN SUCH INSTANCES THE COPYING AND RETURN OF SUCH ORIGINAL, OR COPY WHERE THE ORIGINAL IS REQUIRED FOR AN APPROPRIATE LEGAL OR INVESTIGATIVE PURPOSE, IS EXPEDITED AND SUCH ORIGINAL OR COPY IS READILY ACCESSIBLE BY THE COVERED AGENCY;

7. REQUIRE ANY OFFICER OR EMPLOYEE IN A COVERED AGENCY TO ANSWER QUESTIONS CONCERNING ANY MATTER RELATED TO THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES. NO STATEMENT OR OTHER EVIDENCE DERIVED THEREFROM MAY BE USED AGAINST SUCH OFFICER OR EMPLOYEE IN ANY SUBSEQUENT CRIMINAL PROSECUTION OTHER THAN FOR PERJURY OR CONTEMPT ARISING FROM SUCH TESTIMONY. THE REFUSAL OF ANY OFFICER OR EMPLOYEE TO ANSWER QUESTIONS SHALL BE CAUSE FOR REMOVAL FROM OFFICE OR EMPLOYMENT OR OTHER APPROPRIATE PENALTY;

8. MONITOR THE IMPLEMENTATION BY COVERED AGENCIES OF ANY RECOMMENDATIONS MADE BY THE LAW ENFORCEMENT INSPECTOR GENERAL;

9. DEVELOP POLICIES, MONITOR AND EVALUATE COVERED AGENCY PERFORMANCE AND PROVIDE GUIDANCE TO ALL COVERED AGENCY ACTIVITIES RELATING TO CRIMINAL INVESTIGATIONS AND OTHER INTELLIGENCE OPERATIONS;

10. PERFORM ANY OTHER FUNCTIONS THAT ARE NECESSARY OR APPROPRIATE TO FULFILL THE DUTIES AND RESPONSIBILITIES OF OFFICE.

S 236. DISCLOSURE OF INFORMATION. THE INSPECTOR SHALL NOT DISCLOSE INFORMATION WHICH IS PROHIBITED FROM DISCLOSURE BY ANY OTHER PROVISION OF LAW.

S 237. FUNCTIONS AND DUTIES. THE LAW ENFORCEMENT INSPECTOR GENERAL SHALL HAVE THE FOLLOWING DUTIES AND RESPONSIBILITIES:

1. RECEIVE AND INVESTIGATE COMPLAINTS FROM ANY SOURCE, OR UPON HIS OR HER OWN INITIATIVE, CONCERNING ALLEGATIONS OF CORRUPTION, FRAUD, CRIMINAL ACTIVITY, CONFLICTS OF INTEREST OR ABUSE IN ANY COVERED AGENCY;

2. INFORM THE HEADS OF COVERED AGENCIES OF SUCH ALLEGATIONS AND THE PROGRESS OF INVESTIGATIONS RELATED THERETO, UNLESS SPECIAL CIRCUMSTANCES REQUIRE CONFIDENTIALITY;

3. DETERMINE WITH RESPECT TO SUCH ALLEGATIONS WHETHER DISCIPLINARY ACTION, CIVIL OR CRIMINAL PROSECUTION, OR FURTHER INVESTIGATION BY AN APPROPRIATE FEDERAL, STATE OR LOCAL AGENCY IS WARRANTED, AND TO ASSIST IN SUCH INVESTIGATIONS;

4. PREPARE AND RELEASE TO THE PUBLIC WRITTEN REPORTS OF SUCH INVESTIGATIONS, AS APPROPRIATE AND TO THE EXTENT PERMITTED BY LAW, SUBJECT TO REDACTION TO PROTECT THE CONFIDENTIALITY OF WITNESSES. THE RELEASE OF ALL OR PORTIONS OF SUCH REPORTS MAY BE DEFERRED TO PROTECT THE CONFIDENTIALITY OF ONGOING INVESTIGATIONS;

5. REVIEW AND EXAMINE PERIODICALLY THE POLICIES AND PROCEDURES OF COVERED AGENCIES WITH REGARD TO THE PREVENTION AND DETECTION OF CORRUPTION, FRAUD, CRIMINAL ACTIVITY, CONFLICTS OF INTEREST OR ABUSE;

6. RECOMMEND REMEDIAL ACTION TO PREVENT OR ELIMINATE CORRUPTION, FRAUD, CRIMINAL ACTIVITY, CONFLICTS OF INTEREST OR ABUSE IN COVERED AGENCIES;

7. ESTABLISH PROGRAMS FOR TRAINING STATE OFFICERS AND EMPLOYEES REGARDING THE PREVENTION AND ELIMINATION OF CORRUPTION, FRAUD, CRIMINAL ACTIVITY, CONFLICTS OF INTEREST OR ABUSE IN COVERED AGENCIES.

S 238. REPORTS. 1. THE INSPECTOR SHALL, NO LATER THAN APRIL THIRTIETH OF EACH YEAR SUBMIT TO THE GOVERNOR AND THE LEGISLATURE A REPORT SUMMARIZING THE ACTIVITIES OF THE OFFICE DURING THE PRECEDING CALENDAR YEAR.

2. (A) THE INSPECTOR SHALL NOT PUBLICLY DISCLOSE INFORMATION WHICH:

(I) IS A PART OF ANY ONGOING CRIMINAL INVESTIGATION;

(II) COMPROMISES AN INTELLIGENCE OPERATION;

(III) IS SPECIFICALLY PROHIBITED FROM DISCLOSURE BY ANY OTHER PROVISION OF LAW.

(B) NOTWITHSTANDING PARAGRAPH (A) OF THIS SUBDIVISION, ANY REPORT UNDER THIS SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC IN A FORM WHICH INCLUDES INFORMATION WITH RESPECT TO A PART OF AN ONGOING CRIMINAL INVESTIGATION ONLY IF SUCH INFORMATION HAS BEEN INCLUDED IN A PUBLIC RECORD.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.