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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:

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

3 ARTICLE 11-A

4 OFFICE OF THE LAW ENFORCEMENT INSPECTOR GENERAL

5 SECTION 232. JURISDICTION.

6 233. ESTABLISHMENT AND ORGANIZATION.

7 234. DEFINITIONS.

8 235. POWERS.

9 236. DISCLOSURE OF INFORMATION.

10 237. FUNCTIONS AND DUTIES.

11 238. REPORTS.

12 S 232. JURISDICTION. THIS ARTICLE SHALL, SUBJECT TO THE LIMITATIONS
13 CONTAINED HEREIN, CONFER UPON THE OFFICE OF THE LAW ENFORCEMENT INSPEC-
14 TOR GENERAL JURISDICTION OVER ALL COVERED AGENCIES. FOR THE PURPOSES OF
15 THIS ARTICLE "COVERED AGENCY" SHALL INCLUDE ALL STATE AND LOCAL GOVERN-
16 MENT LAW ENFORCEMENT AND INTELLIGENCE AGENCIES, INCLUDING THE DIVISION
17 OF HOMELAND SECURITY AND EMERGENCY SERVICES, ENGAGED IN INTELLIGENCE
18 OPERATIONS.

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

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

27 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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1 4. SUCH PERSON APPOINTED AS INSPECTOR SHALL, UPON HIS OR HER APPOINT-
2 MENT, HAVE NOT LESS THAN TEN YEARS PROFESSIONAL EXPERIENCE IN AREAS OF
3 LAW ENFORCEMENT AND LAW ENFORCEMENT TRAINING, PROVIDED THE EXPERIENCE
4 INVOLVES EXPERTISE IN INTELLIGENCE OPERATIONS.

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

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

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

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

14 2. "INTELLIGENCE OPERATIONS" SHALL MEAN ANY INVESTIGATIVE LAW ENFORCE-
15 MENT OPERATION, INCLUDING BUT NOT LIMITED TO, SENSITIVE OPERATION PLANS,
16 SECURITY ACTIVITIES, INTELLIGENCE MATTERS, COUNTERINTELLIGENCE MATTERS
17 AND ONGOING CRIMINAL INVESTIGATIONS.

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

19 1. SUBPOENA AND ENFORCE THE ATTENDANCE OF WITNESSES;

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

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

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

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

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

37 7. REQUIRE ANY OFFICER OR EMPLOYEE IN A COVERED AGENCY TO ANSWER QUES-
38 TIONS CONCERNING ANY MATTER RELATED TO THE PERFORMANCE OF HIS OR HER
39 OFFICIAL DUTIES. NO STATEMENT OR OTHER EVIDENCE DERIVED THEREFROM MAY BE
40 USED AGAINST SUCH OFFICER OR EMPLOYEE IN ANY SUBSEQUENT CRIMINAL PROSE-
41 CUTION OTHER THAN FOR PERJURY OR CONTEMPT ARISING FROM SUCH TESTIMONY.
42 THE REFUSAL OF ANY OFFICER OR EMPLOYEE TO ANSWER QUESTIONS SHALL BE
43 CAUSE FOR REMOVAL FROM OFFICE OR EMPLOYMENT OR OTHER APPROPRIATE PENAL-
44 TY;

45 8. MONITOR THE IMPLEMENTATION BY COVERED AGENCIES OF ANY RECOMMENDA-
46 TIONS MADE BY THE LAW ENFORCEMENT INSPECTOR GENERAL;

47 9. DEVELOP POLICIES, MONITOR AND EVALUATE COVERED AGENCY PERFORMANCE
48 AND PROVIDE GUIDANCE TO ALL COVERED AGENCY ACTIVITIES RELATING TO CRIMI-
49 NAL INVESTIGATIONS AND OTHER INTELLIGENCE OPERATIONS;

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

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

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

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

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

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

11 4. PREPARE AND RELEASE TO THE PUBLIC WRITTEN REPORTS OF SUCH INVESTI-
12 GATIONS, AS APPROPRIATE AND TO THE EXTENT PERMITTED BY LAW, SUBJECT TO
13 REDACTION TO PROTECT THE CONFIDENTIALITY OF WITNESSES. THE RELEASE OF
14 ALL OR PORTIONS OF SUCH REPORTS MAY BE DEFERRED TO PROTECT THE CONFIDEN-
15 TIALITY OF ONGOING INVESTIGATIONS;

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

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

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

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

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

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

30 (II) COMPROMISES AN INTELLIGENCE OPERATION;

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

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

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