

2783

2013-2014 Regular Sessions

I N S E N A T E

January 23, 2013

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.

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

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

4 3. THE INSPECTOR SHALL REPORT DIRECTLY TO THE GOVERNOR.

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

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

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

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

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

18 2. "INTELLIGENCE OPERATIONS" SHALL MEAN ANY INVESTIGATIVE LAW ENFORCE-
19 MENT OPERATION, INCLUDING BUT NOT LIMITED TO, SENSITIVE OPERATION PLANS,
20 SECURITY ACTIVITIES, INTELLIGENCE MATTERS, COUNTERINTELLIGENCE MATTERS
21 AND ONGOING CRIMINAL INVESTIGATIONS.

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

23 1. SUBPOENA AND ENFORCE THE ATTENDANCE OF WITNESSES;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 4. PREPARE AND RELEASE TO THE PUBLIC WRITTEN REPORTS OF SUCH INVESTI-
17 GATIONS, AS APPROPRIATE AND TO THE EXTENT PERMITTED BY LAW, SUBJECT TO
18 REDACTION TO PROTECT THE CONFIDENTIALITY OF WITNESSES. THE RELEASE OF
19 ALL OR PORTIONS OF SUCH REPORTS MAY BE DEFERRED TO PROTECT THE CONFIDEN-
20 TIALITY OF ONGOING INVESTIGATIONS;

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

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

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

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

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

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

35 (II) COMPROMISES AN INTELLIGENCE OPERATION;

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

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

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