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H.B. No. 2854

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the creation of an office of inspector general at
3 certain state agencies.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. SHORT TITLE. This Act may be cited as the Texas
6 Inspector General Act.

7 SECTION 2. PURPOSE. The purpose of this Act is to establish
8 a program of:

9 (1) investigation, audit, and performance review; and

10 (2) contract negotiation, evaluation, and monitoring

11 to:

12 (A) deter and identify fraud, abuse, and illegal
13 acts;

14 (B) provide increased accountability, integrity,
15 and oversight; and

16 (C) assist in improving state agency operations.

17 SECTION 3. OFFICE OF INSPECTOR GENERAL. Subtitle C, Title
18 10, Government Code, is amended by adding Chapter 2115 to read as
19 follows:

20 CHAPTER 2115. TEXAS INSPECTORS GENERAL

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 2115.001. DEFINITIONS. In this chapter:

23 (1) "Agency" means a state agency to which this
24 chapter applies, as provided by Section 2115.002.

1 (2) "Inspector general" means an individual appointed
2 as an inspector general at an agency under this subchapter.

3 (3) "Presiding officer" means the presiding officer of
4 the governing body of an agency, or the commissioner of an agency if
5 a single commissioner presides over the agency.

6 (4) "Review" includes an audit, inspection,
7 investigation, or similar activity.

8 Sec. 2115.002. APPLICABILITY. This chapter applies to the
9 following state agencies:

10 (1) Texas Building and Procurement Commission;

11 (2) Texas Commission on Environmental Quality;

12 (3) Texas Department of Criminal Justice;

13 (4) Texas Department of Insurance;

14 (5) Texas Department of Transportation;

15 (6) Texas Education Agency;

16 (7) Texas Higher Education Coordinating Board;

17 (8) Texas Workers' Compensation Commission; and

18 (9) Texas Workforce Commission.

19 [Sections 2115.003-2115.050 reserved for expansion]

20 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

21 Sec. 2115.051. CREATION OF OFFICE OF INSPECTOR GENERAL.

22 The office of inspector general is created at each agency as
23 provided by this chapter to:

24 (1) conduct investigations, audits, evaluations,
25 inspections, and other reviews; and

26 (2) monitor contracts in accordance with the
27 professional standards that relate to the fields of investigation

1 and auditing in government.

2 Sec. 2115.052. APPOINTMENT. (a) The governing body of an
3 agency shall appoint an inspector general to serve in that position
4 within the agency.

5 (b) An inspector general serves at the pleasure of the
6 governing body of the inspector general's agency.

7 Sec. 2115.053. QUALIFICATIONS. (a) In appointing a person
8 as inspector general, an agency shall:

9 (1) consider the person's integrity, capability for
10 strong leadership, and demonstrated knowledge, skills, abilities,
11 and experience in investigation, prosecution, management analysis,
12 public administration, criminal justice administration,
13 accounting, auditing, financial analysis, audits, law, or other
14 closely related fields; and

15 (2) give preference to a person certified as an
16 inspector general.

17 (b) An inspector general appointed under this subchapter is
18 required to obtain certification as an inspector general not later
19 than a date determined by the appointing agency.

20 (c) Additional recommended qualifications for appointment
21 as an inspector general include licenses or certifications as a
22 lawyer, fraud examiner, public accountant, or internal auditor.

23 Sec. 2115.054. ORGANIZATION. An inspector general shall
24 establish an organizational structure for the inspector general's
25 office that is appropriate to carrying out the responsibilities and
26 functions of the office.

27 Sec. 2115.055. INDEPENDENCE OF OFFICE. (a) Except as

1 provided by Sections 2115.052(b), 2115.054, and 2115.201, an
2 inspector general operates independently from the agency in which
3 the inspector general serves.

4 (b) An executive or legislative state agency may not impair
5 or prohibit an inspector general from initiating or completing a
6 review.

7 [Sections 2115.056–2115.100 reserved for expansion]

8 SUBCHAPTER C. PERSONNEL

9 Sec. 2115.101. EMPLOYEES. An inspector general may employ
10 personnel as necessary to administer the inspector general's
11 office.

12 Sec. 2115.102. EXPERTS. (a) An inspector general may
13 employ or contract with certified public accountants, management
14 consultants, or other professional experts necessary to
15 independently perform the functions of the inspector general's
16 office.

17 (b) Chapter 2254 does not apply to a person employed or
18 contracted with under this section.

19 Sec. 2115.103. PEACE OFFICERS. An inspector general may
20 employ peace officers.

21 [Sections 2115.104–2115.150 reserved for expansion]

22 SUBCHAPTER D. GENERAL POWERS AND DUTIES OF INSPECTOR GENERAL

23 Sec. 2115.151. GENERAL AUTHORITY. An inspector general may
24 perform all activities necessary to carry out the functions under
25 this chapter.

26 Sec. 2115.152. OPERATION OF OFFICE. An inspector general
27 may establish policies and procedures to guide the operation of the

1 inspector general's office.

2 Sec. 2115.153. PROFESSIONAL STANDARDS. A review conducted
3 by an office shall conform to professional standards and best
4 practices for offices of inspector general.

5 Sec. 2115.154. GENERAL REVIEW AUTHORITY. (a) An inspector
6 general may monitor and evaluate:

7 (1) the activities and records of individuals with
8 contracts, procurements, grants, or agreements with the agency; and

9 (2) any activity or operation of the agency.

10 (b) An inspector general may conduct criminal, civil, and
11 administrative reviews related to the course and scope of the
12 duties of the inspector general.

13 (c) An inspector general may review the efficiency and
14 effectiveness of the operations and functions of the inspector
15 general's agency and conduct reviews of the agency's performance
16 measurement system, including the reliability and validity of the
17 information provided by the system's measures and standards.

18 Sec. 2115.155. ACCESS UNRESTRICTED. (a) An inspector
19 general may obtain full and unrestricted access to all offices,
20 employees, records, reports, contracts, correspondence, and any
21 other information or materials, including electronic data, of the
22 inspector general's agency or any other organization or individual
23 involved with the agency.

24 (b) The authority provided by this section supersedes any
25 claim of privilege.

26 (c) An inspector general may attend any meeting of the
27 inspector general's agency, including a closed meeting under

1 Chapter 551.

2 Sec. 2115.156. COOPERATION REQUIRED. As necessary for a
3 review under this chapter, an inspector general may request and
4 compel from any governmental entity in this state cooperation,
5 assistance, services, and data.

6 Sec. 2115.157. EMPLOYEE REPORTS. An inspector general may
7 require employees at the inspector general's agency to report to
8 the agency's office information regarding fraud, waste, misuse,
9 corruption, illegal acts, or abuse.

10 Sec. 2115.158. COMPLAINTS. An inspector general may
11 receive and investigate complaints on the inspector general's own
12 initiative or from any source concerning alleged abuse, fraud, or a
13 service deficiency, including a deficiency in the operation and
14 maintenance of a facility.

15 Sec. 2115.159. SUBPOENA. (a) An inspector general may
16 subpoena witnesses or any records or other documents, including
17 electronic data, necessary for a review conducted by the inspector
18 general's office.

19 (b) If the person to whom a subpoena is directed under this
20 section fails to comply, an inspector general may request the
21 attorney general to bring suit in district court to enforce the
22 subpoena. If the court determines that good cause exists for the
23 issuance of the subpoena, the court shall order compliance. The
24 court may modify the requirements of a subpoena that the court
25 determines are unreasonable. Failure to comply with the order of
26 the district court is punishable as contempt.

27 Sec. 2115.160. INTERNAL AUDITOR. (a) An inspector general

1 may exercise the powers granted to an internal auditor under
2 Chapter 2102.

3 (b) Section 2102.007(a)(1) does not apply to an internal
4 auditor of an agency. The internal auditor of the agency under
5 Chapter 2102 shall report to the inspector general.

6 Sec. 2115.161. COOPERATION WITH LAW ENFORCEMENT OFFICIALS
7 AND OTHER ENTITIES. (a) An inspector general may provide
8 information and evidence relating to criminal acts to the
9 appropriate law enforcement officials.

10 (b) An inspector general may refer matters for further
11 civil, criminal, and administrative action to appropriate
12 administrative and prosecutorial agencies, including the attorney
13 general.

14 (c) An inspector general may conduct a joint review or other
15 project with other appropriate agencies.

16 Sec. 2115.162. PREVENTION. An inspector general may engage
17 in prevention activities, including the review of legislation,
18 rules, policies, procedures, transactions, training, and
19 education.

20 Sec. 2115.163. REMEDIATION; MONITORING. (a) An inspector
21 general may recommend remedial actions to be taken by the inspector
22 general's agency to overcome or correct a deficiency or
23 inefficiency identified by the inspector general's office.

24 (b) An inspector general may monitor implementation of
25 recommendations made by the inspector general's office and other
26 audit agencies for compliance.

27 Sec. 2115.164. RULEMAKING AUTHORITY. (a) An agency shall

1 adopt rules to respond to reports and referrals from the agency's
2 inspector general, including sanctions for violations.

3 (b) The rules shall include due process for referrals and
4 findings that might result in administrative penalties.

5 [Sections 2115.165-2115.200 reserved for expansion]

6 SUBCHAPTER E. OVERSIGHT OF INSPECTOR GENERAL; REPORTS

7 Sec. 2115.201. ORGANIZATION PLACEMENT. An inspector
8 general reports to the presiding officer of the inspector general's
9 agency.

10 Sec. 2115.202. ANNUAL EVALUATION. An agency's presiding
11 officer shall conduct an annual evaluation of the agency's
12 inspector general.

13 Sec. 2115.203. ALLEGATIONS OF MISCONDUCT AGAINST PRESIDING
14 OFFICER. If allegations of misconduct by a presiding officer
15 result in an investigation by an inspector general, the inspector
16 general shall report to the governor during the investigation until
17 the report is completed or the investigation is closed without a
18 finding.

19 Sec. 2115.204. REPORTING OFFICE ACTIVITIES. An inspector
20 general shall report the findings of the inspector general's office
21 to:

22 (1) the presiding officer of the inspector general's
23 agency;

24 (2) the governor;

25 (3) the lieutenant governor;

26 (4) the speaker of the house of representatives; and

27 (5) appropriate law enforcement and prosecutorial

1 agencies, if the findings relate to a criminal investigation.

2 Sec. 2115.205. FLAGRANT VIOLATIONS; IMMEDIATE REPORT. An
3 inspector general shall immediately report to the presiding officer
4 of the inspector general's agency and the governor's general
5 counsel a particularly serious or flagrant problem relating to the
6 administration of a program or operation of the agency or
7 interference with an inspector general operation.

8 [Sections 2115.206-2115.250 reserved for expansion]

9 SUBCHAPTER F. PUBLIC RECORDS; EXCEPTIONS

10 Sec. 2115.251. INFORMATION CONFIDENTIAL. (a) Except as
11 provided by this section and Section 2115.252, all information and
12 material compiled by an inspector general during an investigation
13 or audit under this chapter is:

14 (1) confidential and not subject to disclosure under
15 Chapter 552; and

16 (2) not subject to disclosure, discovery, subpoena, or
17 other means of legal compulsion for release to anyone other than the
18 office or its agents involved in the investigation related to that
19 information or material.

20 (b) As an inspector general determines appropriate,
21 information relating to an investigation or audit may be disclosed
22 to:

23 (1) a law enforcement agency; or

24 (2) the attorney general.

25 (c) A person that receives information under Subsection (b)
26 may not disclose the information except to the extent that
27 disclosure is consistent with the authorized purpose for which the

1 person first obtained the information.

2 Sec. 2115.252. FINAL AUDIT AND INVESTIGATION REPORTS. (a)

3 An inspector general's final investigation and audit reports are
4 subject to disclosure under Chapter 552.

5 (b) All working papers and other documents related to
6 compiling the final audit and investigation reports remain
7 confidential and are not subject to disclosure under Chapter 552.

8 [Sections 2115.253-2115.300 reserved for expansion]

9 SUBCHAPTER G. FINANCIAL PROVISIONS

10 Sec. 2115.301. BUDGET. An inspector general shall submit a
11 budget to the presiding officer of the inspector general's agency.

12 Sec. 2115.302. COSTS. (a) An inspector general may
13 maintain information regarding the cost of investigations.

14 (b) An inspector general may cooperate with appropriate
15 administrative and prosecutorial agencies in recovering costs
16 incurred under this chapter from nongovernmental entities,
17 including contractors or individuals involved in violations of
18 state and federal rules, statutes, or abusive or wilful misconduct.

19 SECTION 4. INTERNAL AUDITOR. Section 2102.007(a),
20 Government Code, is amended to read as follows:

21 (a) The internal auditor shall:

22 (1) report directly, except as provided by Chapter
23 2115, to the state agency's governing board or the administrator of
24 the state agency if the state agency does not have a governing
25 board;

26 (2) develop an annual audit plan;

27 (3) conduct audits as specified in the audit plan and

1 document deviations;

2 (4) prepare audit reports;

3 (5) conduct quality assurance reviews in accordance
4 with professional standards as provided by Section 2102.011 and
5 periodically take part in a comprehensive external peer review;
6 and

7 (6) conduct economy and efficiency audits and program
8 results audits as directed by the state agency's governing board or
9 the administrator of the state agency if the state agency does not
10 have a governing board.

11 SECTION 5. EFFECTIVE DATE. This Act takes effect September
12 1, 2005.