

By: Deuell, et al.

S.B. No. 750

A BILL TO BE ENTITLED

AN ACT

relating to the creation of offices of inspectors general within certain state agencies.

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

SECTION 1. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2116 to read as follows:

CHAPTER 2116. TEXAS INSPECTORS GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2116.001. DEFINITIONS. In this chapter:

(1) "Agency" means a state agency to which this chapter applies, as provided by Section 2116.002.

(2) "Coordinating council" means the Coordinating Council of Inspectors General established under Section 2116.101.

(3) "Inspector general" means an individual appointed as an inspector general at an agency under this chapter.

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

(5) "Review" includes an inspection, investigation, or similar activity.

Sec. 2116.002. APPLICABILITY TO CERTAIN STATE AGENCIES.

This chapter applies to the following state agencies:

(1) Health and Human Services Commission;

(2) Texas Department of Criminal Justice;

- 1           (3) Texas Department of Transportation;
- 2           (4) Texas Education Agency;
- 3           (5) Texas Higher Education Coordinating Board; and
- 4           (6) Texas Youth Commission.

5           [Sections 2116.003-2116.050 reserved for expansion]

6           SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

7           Sec. 2116.051. CREATION OF OFFICE OF INSPECTOR GENERAL.

8           The office of inspector general is created at each agency as  
9           provided by this chapter to conduct investigations, inspections,  
10           and other reviews.

11           Sec. 2116.052. APPOINTMENT; TERM. (a) The governor with  
12           the advice and consent of the senate shall appoint an inspector  
13           general to serve within each agency.

14           (b) An inspector general serves a two-year term expiring  
15           February 1 of each odd-numbered year.

16           Sec. 2116.053. QUALIFICATIONS. (a) In appointing a person  
17           as inspector general, the governor shall consider the person's  
18           integrity, capability for strong leadership, and demonstrated  
19           knowledge, skills, abilities, and experience in investigation,  
20           prosecution, management analysis, public administration, criminal  
21           justice administration, accounting, auditing, financial analysis,  
22           law, or other closely related fields.

23           (b) Additional recommended qualifications for appointing an  
24           inspector general include licenses or certifications as a lawyer,  
25           fraud examiner, public accountant, or internal auditor.

26           Sec. 2116.054. CONFLICT OF INTEREST. (a) An inspector  
27           general may not serve as an ex officio member on the governing body

1 of a governmental entity.

2 (b) An inspector general may not have a financial interest  
3 in the transactions of the inspector general's agency.

4 Sec. 2116.055. ORGANIZATION. (a) An inspector general  
5 shall establish an organizational structure for the inspector  
6 general's office that is appropriate to carrying out the  
7 responsibilities and functions of the office.

8 (b) The office must be established within the agency only  
9 using existing agency resources dedicated to the investigation of  
10 fraud, abuse, and employee misconduct.

11 Sec. 2116.056. INDEPENDENCE OF OFFICE. (a) Except as  
12 provided by Sections 2116.157, 2116.161, 2116.201, and 2116.202, an  
13 inspector general operates independently of the agency in which the  
14 inspector general serves.

15 (b) An executive state agency may not impair or prohibit an  
16 inspector general from initiating or completing a review.

17 Sec. 2116.057. OPERATION OF OFFICE. An inspector general  
18 shall establish policies and procedures to guide the operation of  
19 the inspector general's office.

20 Sec. 2116.058. QUALITY ASSURANCE AND CONTROL. (a) An  
21 inspector general shall adopt procedures to ensure adequate quality  
22 control over the inspector general's work and practices and to  
23 ensure that the work of the inspector general's office meets  
24 commonly used and adopted professional standards.

25 (b) The inspector general shall implement the quality  
26 control program to guarantee that the office is structured  
27 appropriately and that the office implements policies and practices

1 to ensure objective and accurate reviews.

2 Sec. 2116.059. PUBLISHING POLICIES AND PROCEDURES IN TEXAS  
3 REGISTER. An inspector general shall publish in the Texas Register  
4 the policies and procedures adopted under this subchapter.

5 [Sections 2116.060-2116.100 reserved for expansion]

6 SUBCHAPTER C. COORDINATING COUNCIL AND PERSONNEL

7 Sec. 2116.101. COORDINATING COUNCIL. (a) The  
8 Coordinating Council of Inspectors General is composed of each  
9 inspector general appointed under Section 2116.052 and the state  
10 auditor.

11 (b) The state auditor shall serve as presiding officer of  
12 the coordinating council.

13 (c) The coordinating council shall meet at least quarterly  
14 at the call of the presiding officer.

15 (d) The coordinating council shall:

16 (1) pursuant to Section 321.022, cooperate and  
17 coordinate investigations as necessary;

18 (2) focus on fraud prevention activities; and

19 (3) coordinate fraud prevention training.

20 (e) The coordinating council shall submit a report of the  
21 coordinating council's activities at least two times each year to:

22 (1) the governor;

23 (2) the lieutenant governor;

24 (3) the speaker of the house of representatives;

25 (4) the state auditor; and

26 (5) the appropriate legislative oversight committees.

27 (f) Chapter 2110 does not apply to the coordinating council.

1 For the purposes of coordinating and cooperating on investigations,  
2 Chapter 551 does not apply to the coordinating council.

3 (g) The coordinating council's activities under Subsection  
4 (d) may not include making management decisions or directing the  
5 operations of a state agency.

6 Sec. 2116.102. PERSONNEL, OFFICE SPACE, AND EQUIPMENT. The  
7 presiding officer of the state agency to which an inspector general  
8 is appointed, using existing agency resources dedicated to the  
9 investigation of fraud, abuse, and employee misconduct, shall  
10 provide sufficient personnel and office space and equipment for the  
11 inspector general to perform the duties prescribed under this  
12 chapter.

13 Sec. 2116.103. EXPERTS. Subject to Sections 2116.055 and  
14 321.020, an inspector general may contract with certified public  
15 accountants, management consultants, or other professional experts  
16 necessary to independently perform the functions of the inspector  
17 general's office. The inspector general shall use existing agency  
18 resources dedicated to the investigation of fraud, abuse, and  
19 employee misconduct for this purpose.

20 [Sections 2116.104-2116.150 reserved for expansion]

21 SUBCHAPTER D. GENERAL POWERS AND DUTIES OF INSPECTOR GENERAL

22 Sec. 2116.151. REVIEW AUTHORITY. (a) An inspector general  
23 may evaluate any activity or operation of the inspector general's  
24 agency related to the investigation, detection, or prevention of  
25 fraud or employee misconduct. A review may include an  
26 investigation or other inquiry into:

27 (1) a specific act or allegation of impropriety,

1 malfeasance, or nonfeasance in the obligation, spending, receipt,  
2 or other use of state money; or

3 (2) a specific financial transaction or practice that  
4 may involve the impropriety, malfeasance, or nonfeasance.

5 (b) An inspector general may conduct criminal, civil, and  
6 administrative reviews related to the course and scope of the  
7 duties of the inspector general.

8 Sec. 2116.152. INITIATION OF REVIEW. An inspector general  
9 may initiate a review:

10 (1) on the inspector general's own initiative; or

11 (2) based on a complaint from any source concerning a  
12 matter described by Section 2116.151 at the agency.

13 Sec. 2116.153. FACTUAL DETERMINATION OF REVIEW. (a) An  
14 inspector general is charged solely with making a determination of  
15 the truth of a complaint based on a finding of facts and presenting  
16 those findings as provided in Subchapter E.

17 (b) An inspector general may not make remedial  
18 recommendations.

19 Sec. 2116.154. ACCESS TO INFORMATION. (a) In furtherance  
20 of a review conducted by the inspector general's office, an  
21 inspector general is entitled to access all books, accounts,  
22 reports, vouchers, or other information from any entity receiving  
23 money from the inspector general's agency, including confidential  
24 information and electronic data. The inspector general may not  
25 access data or other information the release of which is restricted  
26 under federal law unless the appropriate federal agency approves  
27 the release.

1        (b) To the extent that the performance of the powers and  
2 duties of the inspector general is not impeded, an inspector  
3 general shall make reasonable efforts to coordinate requests for  
4 access under Subsection (a) so as not to hinder the daily operations  
5 of the entity.

6        (c) Notwithstanding any other provision of this section, an  
7 inspector general's access to information under Subsection (a) is  
8 limited to information connected to the specific matter under  
9 investigation by the inspector general or a specific contract  
10 related to that investigation.

11        Sec. 2116.155. COOPERATION REQUIRED. (a) In furtherance  
12 of a review conducted by the inspector general's office, an  
13 inspector general may require the assistance of the administrative  
14 head, the governing body, an auditor or accountant, or any other  
15 employee of the inspector general's agency.

16        (b) To the extent that the performance of the powers and  
17 duties of the inspector general is not impeded, an inspector  
18 general shall make reasonable efforts to coordinate requests for  
19 assistance under Subsection (a) so as not to hinder the daily  
20 operations of the agency.

21        Sec. 2116.156. EMPLOYEE REPORTS. The presiding officer of  
22 the agency to which an inspector general is appointed and the  
23 inspector general shall require employees at the agency to report  
24 to the agency's office of inspector general information regarding  
25 fraud, waste, misuse, corruption, illegal acts, or abuse.

26        Sec. 2116.157. SUBPOENAS. (a) On request of an inspector  
27 general, a district attorney or the attorney general may issue a

1 subpoena to compel the attendance of a relevant witness or the  
2 production, for inspection or copying, of relevant evidence in  
3 connection with a review conducted under this chapter.

4 (b) A subpoena may be served personally or by certified  
5 mail.

6 (c) If a person fails to comply with a subpoena, the  
7 inspector general, acting through the attorney general, may file  
8 suit to enforce the subpoena in a district court in this state.

9 (d) On finding that good cause exists for issuing the  
10 subpoena, the court shall order the person to comply with the  
11 subpoena. The court may hold in contempt a person who fails to obey  
12 the court order.

13 (e) The inspector general shall pay a reasonable fee for  
14 photocopies subpoenaed under this section in an amount not to  
15 exceed the amount the inspector general may charge for copies of its  
16 records.

17 (f) The reimbursement of the expenses of a witness whose  
18 attendance is compelled under this section is governed by Section  
19 2001.103.

20 Sec. 2116.158. INTERNAL AUDITOR. (a) In this section,  
21 "internal auditor" means a person appointed under Section 2102.006.

22 (b) The internal auditor for the agency shall provide the  
23 inspector general with a copy of the agency's internal audit plan  
24 to:

25 (1) assist in the coordination of efforts between the  
26 inspector general and the internal auditor; and

27 (2) limit duplication of effort regarding reviews by



1 the inspector general and internal auditor.

2 (c) The internal auditor shall provide to the inspector  
3 general all final audit reports concerning audits of any:

4 (1) part or division of the agency;

5 (2) contract, procurement, or grant; and

6 (3) program conducted by the agency.

7 Sec. 2116.159. COOPERATION WITH LAW ENFORCEMENT OFFICIALS  
8 AND OTHER ENTITIES. (a) An inspector general shall provide  
9 information and evidence relating to criminal acts to the state  
10 auditor's office and appropriate law enforcement officials.

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

15 (c) An inspector general may enter into a memorandum of  
16 understanding with a law enforcement or prosecutorial agency,  
17 including the office of the attorney general, to assist in  
18 conducting a review under this chapter.

19 Sec. 2116.160. COOPERATION AND COORDINATION WITH STATE  
20 AUDITOR. (a) The state auditor may, on request of an inspector  
21 general, provide appropriate information or other assistance to the  
22 inspector general, as determined by the state auditor.

23 (b) An inspector general may meet with the state auditor's  
24 office to coordinate a review conducted under this chapter, share  
25 information, or schedule work plans.

26 (c) The state auditor is entitled to access all information  
27 maintained by an inspector general, including vouchers and

1 electronic data and information obtained under Section 2116.154 or  
2 subject to 2116.251.

3 (d) Any information obtained or provided by the state  
4 auditor under this section is confidential and not subject to  
5 disclosure under Chapter 552.

6 Sec. 2116.161. PREVENTION. An inspector general may  
7 provide training or other education regarding the prevention of  
8 fraud, waste, or abuse at the inspector general's agency. The  
9 training or education must be approved by the presiding officer.

10 Sec. 2116.162. RULEMAKING. (a) An agency may adopt rules  
11 to respond to reports and referrals from the agency's inspector  
12 general, including sanctions for violations.

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

15 [Sections 2116.163-2116.200 reserved for expansion]

16 SUBCHAPTER E. OVERSIGHT OF INSPECTOR GENERAL; REPORTS

17 Sec. 2116.201. ORGANIZATION PLACEMENT. An inspector  
18 general reports to the presiding officer of the inspector general's  
19 agency.

20 Sec. 2116.202. ANNUAL EVALUATION. An agency's presiding  
21 officer shall conduct an annual evaluation of the agency's  
22 inspector general. As part of this evaluation, the presiding  
23 officer may request that the attorney general evaluate the policies  
24 and practices of the inspector general to ensure that the inspector  
25 general complies with professional standards and nationally  
26 accepted policies and practices.

27 Sec. 2116.203. ALLEGATIONS OF MISCONDUCT AGAINST PRESIDING

1 OFFICER. If allegations that a presiding officer has engaged in  
2 misconduct result in a review by an inspector general, the  
3 inspector general shall report to the governor during the review  
4 until the report is completed or the review is closed without a  
5 finding.

6 Sec. 2116.204. PERIODIC REPORTING TO STATE AUDITOR  
7 REQUIRED. An inspector general shall timely inform the state  
8 auditor of the initiation of a review and the ongoing status of each  
9 review.

10 Sec. 2116.205. REPORTING OFFICE FINDINGS. An inspector  
11 general shall report the findings of the inspector general's office  
12 to:

13 (1) the presiding officer of the inspector general's  
14 agency;

15 (2) the governor;

16 (3) the lieutenant governor;

17 (4) the speaker of the house of representatives;

18 (5) the state auditor's office;

19 (6) the appropriate legislative oversight committees;

20 and

21 (7) appropriate law enforcement and prosecutorial  
22 agencies, including the office of the attorney general, if the  
23 findings relate to a criminal investigation.

24 Sec. 2116.206. FLAGRANT VIOLATIONS; IMMEDIATE REPORT. An  
25 inspector general shall immediately report to the presiding officer  
26 of the inspector general's agency, the governor's general counsel,  
27 and the state auditor a particularly serious or flagrant problem

1 relating to the administration of a program or operation of the  
2 agency or interference with an inspector general operation.

3 Sec. 2116.207. ANNUAL REPORT. (a) An inspector general  
4 annually shall prepare a complete and detailed written report  
5 describing the activities of the inspector general during the  
6 fiscal year. The report must separately describe each major  
7 investigation, audit, review, fraud prevention effort, and agency  
8 assistance effort completed during the fiscal year.

9 (b) The annual report must meet the reporting requirements  
10 applicable to financial reporting provided in the General  
11 Appropriations Act.

12 (c) The inspector general shall deliver a copy of each  
13 annual report to:

14 (1) the governor;

15 (2) the lieutenant governor;

16 (3) the speaker of the house of representatives;

17 (4) the presiding officer of each house and senate  
18 committee having jurisdiction over an agency to which this chapter  
19 applies;

20 (5) the presiding officer of each agency to which this  
21 chapter applies;

22 (6) the state auditor; and

23 (7) the comptroller.

24 (d) Each agency to which this chapter applies shall post the  
25 annual report on its agency Internet website.

26 (e) The inspector general shall issue the annual report not  
27 later than the 60th day after the last day of each fiscal year.

1 [Sections 2116.208-2116.250 reserved for expansion]

2 SUBCHAPTER F. PUBLIC RECORDS; EXCEPTIONS

3 Sec. 2116.251. INFORMATION CONFIDENTIAL. (a) Except as  
4 provided by this section, Sections 2116.160 and 2116.252, and  
5 Subchapter E, all information and material compiled by an inspector  
6 general during a review under this chapter is:

7 (1) confidential and not subject to disclosure under  
8 Chapter 552; and

9 (2) not subject to disclosure, discovery, subpoena, or  
10 other means of legal compulsion for release to anyone other than the  
11 state auditor's office, or the inspector general's office or its  
12 agents involved in the review related to that information or  
13 material.

14 (b) As an inspector general determines appropriate,  
15 information relating to a review shall be disclosed to:

16 (1) a law enforcement agency;

17 (2) the attorney general; or

18 (3) the state auditor's office.

19 (c) A person that receives information under Subsection (b)  
20 may not disclose the information except to the extent that  
21 disclosure is consistent with the authorized purpose for which the  
22 person first obtained the information.

23 Sec. 2116.252. FINAL REVIEW REPORTS. (a) An inspector  
24 general shall prepare a final report for each review conducted  
25 under this chapter. The final report must include:

26 (1) a summary of the activities performed by the  
27 inspector general in conducting the review;

1           (2) a determination of whether wrongdoing was found;  
2 and

3           (3) a description of any findings of wrongdoing.

4           (b) An inspector general's final review reports are subject  
5 to disclosure under Chapter 552.

6           (c) All working papers and other documents related to  
7 compiling the final review reports remain confidential and are not  
8 subject to disclosure under Chapter 552.

9           (d) Unless otherwise prohibited by this chapter or other  
10 law, the inspector general shall deliver a copy of each final report  
11 that concerns the implementation or administration of a state or  
12 federally funded program to:

13               (1) the presiding officer of the subject agency;

14               (2) the governor;

15               (3) the lieutenant governor;

16               (4) the speaker of the house of representatives;

17               (5) the state auditor; and

18               (6) the appropriate legislative oversight committees.

19           [Sections 2116.253-2116.300 reserved for expansion]

20           SUBCHAPTER G. STATE AUDITOR AND INSPECTOR GENERAL INDEPENDENCE

21           Sec. 2116.301. STATE AUDITOR AUDITS, INVESTIGATIONS, AND  
22 ACCESS TO INFORMATION NOT IMPAIRED. This chapter or other law  
23 related to the operation of an inspector general does not prohibit  
24 the state auditor from conducting an audit or an investigation or  
25 other review or from having full and complete access to all records  
26 and other information, including witnesses and electronic data,  
27 that the state auditor considers necessary for the audit or the

1 investigation or other review.

2 Sec. 2116.302. ACCESS TO STATE AUDITOR INFORMATION NOT  
3 IMPAIRED. Except as authorized by the state auditor, this chapter  
4 or other law related to the operation of an inspector general does  
5 not permit an inspector general or any other person to access any  
6 working papers, including any documents, notes, and other  
7 information, collected or maintained by the state auditor's office.

8 Sec. 2116.303. AUTHORITY OF STATE AUDITOR TO CONDUCT AUDITS  
9 NOT IMPAIRED. This chapter or other law related to the operation of  
10 an inspector general does not take precedence over the authority of  
11 the state auditor to conduct an audit under Chapter 321 or other  
12 law.

13 [Sections 2116.304-2116.350 reserved for expansion]

14 SUBCHAPTER H. FINANCIAL PROVISIONS

15 Sec. 2116.351. BUDGET. An inspector general shall submit a  
16 budget to the presiding officer of the inspector general's agency.

17 Sec. 2116.352. COSTS. (a) An inspector general shall  
18 maintain information regarding the cost of reviews.

19 (b) An inspector general may cooperate with appropriate  
20 administrative and prosecutorial agencies, including the office of  
21 the attorney general, in recovering costs incurred under this  
22 chapter from nongovernmental entities, including contractors or  
23 individuals involved in:

24 (1) violations of state and federal rules or statutes;

25 or

26 (2) abusive or wilful misconduct.

27 SECTION 2. Subsections (a), (b), and (h), Section 531.102,

1 Government Code, are amended to read as follows:

2 (a) In this section, "office" means [~~The commission,~~  
3 ~~through~~] the commission's office of inspector general established  
4 under Chapter 2116 [~~, is responsible for the investigation of fraud~~  
5 ~~and abuse in the provision of health and human services and the~~  
6 ~~enforcement of state law relating to the provision of those~~  
7 ~~services. The commission may obtain any information or technology~~  
8 ~~necessary to enable the office to meet its responsibilities under~~  
9 ~~this subchapter or other law].~~

10 (b) The [~~commission, in consultation with the~~] inspector  
11 general for the commission [~~]~~ shall set clear objectives,  
12 priorities, and performance standards for the office that  
13 emphasize [~~+~~

14 [~~(1) coordinating investigative efforts to~~  
15 ~~aggressively recover money;~~

16 [~~(2) allocating resources to cases that have the~~  
17 ~~strongest supportive evidence and the greatest potential for~~  
18 ~~recovery of money; and~~

19 [~~(3)~~] maximizing opportunities for referral of cases  
20 to the office of the attorney general in accordance with Section  
21 531.103.

22 (h) In addition to performing functions and duties  
23 otherwise provided by law, the office may:

24 (1) assess administrative penalties otherwise  
25 authorized by law on behalf of the commission or a health and human  
26 services agency;

27 (2) request that the attorney general obtain an



1 injunction to prevent a person from disposing of an asset  
2 identified by the office as potentially subject to recovery by the  
3 office due to the person's fraud or abuse;

4 (3) provide for coordination between the office and  
5 special investigative units formed by managed care organizations  
6 under Section 531.113 or entities with which managed care  
7 organizations contract under that section;

8 (4) audit the use and effectiveness of state or  
9 federal funds, including contract and grant funds, administered by  
10 a person or state agency receiving the funds from a health and human  
11 services agency; and

12 (5) conduct investigations relating to the funds  
13 described by Subdivision (4) [~~and~~

14 [~~(6) recommend policies promoting economical and~~  
15 ~~efficient administration of the funds described by Subdivision (4)~~  
16 ~~and the prevention and detection of fraud and abuse in~~  
17 ~~administration of those funds].~~

18 SECTION 3. Subsections (a-1), (d), and (e), Section  
19 531.102, and Section 531.1021, Government Code, are repealed.

20 SECTION 4. (a) The repeal by this Act of certain  
21 provisions of Section 531.102, Government Code, does not affect the  
22 validity of a complaint, investigation, or other proceeding  
23 initiated under that section before the effective date of this Act.  
24 A complaint, investigation, or other proceeding initiated under  
25 that section is continued in accordance with the changes in law made  
26 by this Act.

27 (b) The repeal by this Act of Section 531.1021, Government

1 Code, does not affect the validity of a subpoena issued under that  
2 section before the effective date of this Act. A subpoena issued  
3 under that section before the effective date of this Act is governed  
4 by the law that existed when the subpoena was issued, and the former  
5 law is continued in effect for that purpose.

6 SECTION 5. (a) The person serving as inspector general  
7 under Subsection (a-1), Section 531.102, Government Code, on the  
8 effective date of this Act or any person appointed to fill a vacancy  
9 in the office held by that person shall serve as the inspector  
10 general for the Health and Human Services Commission under Chapter  
11 2116, Government Code, as added by this Act, until February 1, 2009,  
12 and carry out the functions of an inspector general in the same  
13 manner as an inspector general appointed under Chapter 2116.

14 (b) This section does not prohibit a person described by  
15 Subsection (a) of this section from being appointed under Chapter  
16 2116, Government Code, as added by this Act, if the person has the  
17 qualifications required under that chapter.

18 SECTION 6. As soon as possible after the effective date of  
19 this Act, the governor shall appoint an inspector general for each  
20 agency other than the Health and Human Services Commission listed  
21 in Section 2116.002, Government Code, as added by this Act, to an  
22 initial term expiring February 1, 2009.

23 SECTION 7. This Act takes effect January 1, 2008.