

By: Rose

H.B. No. 4161

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the office of inspector general and the appointment of inspectors general at the Health and Human Services Commission, Texas Youth Commission, Department of Public Safety of the State of Texas, Texas Education Agency, and Texas Department of Transportation; providing penalties.

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

SECTION 1. Subtitle B, Title 4, Government Code, is amended by adding Chapter 422 to read as follows:

CHAPTER 422. OFFICES OF INSPECTORS GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 422.001. SHORT TITLE. This chapter may be cited as the Texas Inspector General Act.

Sec. 422.002. PURPOSE. The purpose of this chapter is to establish guidelines for the offices of inspectors general at certain state agencies.

Sec. 422.003. DEFINITIONS. In this chapter:

(1) "Agency" means a state agency subject to this chapter under Section 422.004.

(2) "Inspector general" means the person appointed under this chapter to serve as inspector general for an agency.

(3) "Office" means the office of inspector general established under this chapter.

(4) "Review" includes an inspection, investigation,

1 audit, or similar activity regarding any act or operation of an
2 agency, a provider, if applicable, or a person in this state that is
3 related to the investigation, detection, or prevention of fraud,
4 waste, abuse, or employee misconduct in an agency program or state
5 or federally funded program implemented, administered, or overseen
6 by or for the agency.

7 (5) "State funds" or "state money" includes federal
8 funds or money received and appropriated by the state or for which
9 the state has oversight responsibility.

10 Sec. 422.004. APPLICABILITY. (a) This chapter applies
11 only to the:

12 (1) Health and Human Services Commission;

13 (2) Texas Youth Commission;

14 (3) Department of Public Safety of the State of Texas;

15 (4) Texas Education Agency; and

16 (5) Texas Department of Transportation.

17 (b) A state agency may not establish an office of inspector
18 general without specific legislative authorization.

19 Sec. 422.005. REFERENCE IN OTHER LAW. Notwithstanding any
20 other provision of law, a reference in law or rule to an agency's
21 office of inspector general means the office of inspector general
22 established under this chapter.

23 [Sections 422.006-422.050 reserved for expansion]

24 SUBCHAPTER B. OFFICE OF INSPECTOR GENERAL

25 Sec. 422.051. ESTABLISHMENT OF OFFICE. (a) The office of
26 inspector general is established as an agency of the state.

27 (b) The office is governed by the inspector general for the

1 office. The inspector general supervises the office staff and
2 manages operations for the office.

3 Sec. 422.052. INDEPENDENCE OF OFFICE. Except as otherwise
4 provided by this chapter, the office, the inspector general for the
5 office, and the inspector general for each agency operate
6 independently of the agency.

7 Sec. 422.053. ADMINISTRATIVE ATTACHMENT. The agency shall
8 provide to the office administrative support services for the
9 inspector general for the agency.

10 Sec. 422.054. SERVICE LEVEL AGREEMENT. (a) The agency and
11 the office shall enter into a service level agreement that
12 establishes the performance standards and deliverables with regard
13 to administrative support by the agency.

14 (b) The service level agreement must be reviewed at least
15 annually to ensure that services and deliverables are provided in
16 accordance with the agreement.

17 Sec. 422.055. DUTIES OF AGENCY. (a) The agency shall:

18 (1) provide administrative assistance to the office;
19 and

20 (2) coordinate administrative responsibilities with
21 the office to avoid unnecessary duplication of duties.

22 (b) The agency may not take an action that affects or
23 relates to the validity, status, or terms of an interagency
24 agreement or a contract to which the office is a party without the
25 office's approval.

26 [Sections 422.056-422.100 reserved for expansion]

1 SUBCHAPTER C. INSPECTOR GENERAL AND PERSONNEL

2 Sec. 422.101. APPOINTMENT. (a) The governor with the
3 advice and consent of the senate shall appoint an inspector general
4 to serve as director of the office and appoint an inspector general
5 for each agency to which this chapter applies.

6 (b) Appointments shall be made without regard to race,
7 color, disability, sex, religion, age, or national origin of the
8 appointee.

9 (c) In making the appointments, the governor shall consider
10 the person's knowledge of laws, experience in the enforcement of
11 law, education, training, and executive ability.

12 Sec. 422.102. TERM. Each inspector general serves a
13 two-year term that expires on February 1 of each odd-numbered year.

14 Sec. 422.103. CONFLICT OF INTEREST. (a) An inspector
15 general may not serve as an ex officio member on the governing body
16 of a governmental entity.

17 (b) An inspector general may not have a financial interest
18 in the transactions of the office, the agency, or any of the
19 office's or agency's contractors or providers.

20 Sec. 422.104. PEACE OFFICERS. (a) The office may employ
21 and commission peace officers to assist an inspector general in
22 carrying out the duties of the office relating to the
23 investigation, detection, and prevention of fraud, waste, and abuse
24 in agency programs or in programs receiving state or federal funds
25 that are implemented, administered, or overseen by or for a state
26 agency.

27 (b) A commissioned peace officer or otherwise designated

1 law enforcement officer employed by the office is not entitled to
2 supplemental benefits from the law enforcement and custodial
3 officer supplemental retirement fund unless the officer transfers
4 from a position, without a break in service, that qualifies for
5 supplemental retirement benefits from the fund.

6 Sec. 422.105. EMPLOYEES; TRAINING. (a) The inspector
7 general for the office may employ personnel as necessary to
8 implement the duties of the office.

9 (b) The inspector general for the office shall train office
10 personnel to pursue, efficiently and as necessary, fraud, waste,
11 and abuse cases in state agency programs or other state or federally
12 funded programs implemented, administered, or overseen by or for
13 the agency.

14 [Sections 422.106-422.150 reserved for expansion]

15 SUBCHAPTER D. GENERAL POWERS AND DUTIES

16 Sec. 422.151. GENERAL RESPONSIBILITIES. The office is
17 responsible for:

18 (1) the review of fraud, waste, and abuse in the
19 provision or funding of services by or for the agency or under a
20 program implemented, administered, or overseen by or for the
21 agency;

22 (2) the enforcement of state law and the protection of
23 the public relating to the provision of those services; and

24 (3) the prevention and detection of crime relating to
25 the provision of those services.

26 Sec. 422.152. RULEMAKING BY INSPECTOR GENERAL. (a)
27 Notwithstanding Section 531.0055(e) and any other law, the

1 inspector general for the office shall adopt the rules necessary to
2 administer the functions of the office, including rules to address
3 the imposition of sanctions and penalties for violations and due
4 process requirements for imposing sanctions and penalties.

5 (b) A rule, standard, or form of the agency that is
6 necessary to accomplish the duties of the office is considered to
7 also be a rule, standard, or form of the office and remains in
8 effect as a rule, standard, or form of the office until changed by
9 the inspector general.

10 Sec. 422.153. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

11 (a) The office shall develop and implement policies that provide
12 the public a reasonable opportunity to appear before the office and
13 to speak on any issue under the office's jurisdiction.

14 (b) The office shall prepare information of public interest
15 describing the functions of the office and the office's procedures
16 by which complaints are filed with and resolved by the office. The
17 office shall make the information available to the public and
18 appropriate state agencies.

19 (c) The office shall keep an information file about each
20 complaint filed with the office relating to a state agency or entity
21 receiving state or federal money and falling under the
22 investigatory jurisdiction of the office.

23 [Sections 422.154-422.200 reserved for expansion]

24 SUBCHAPTER E. REVIEWS, INVESTIGATIONS, AND AUDITS

25 Sec. 422.201. REVIEW, INVESTIGATION, AND AUDIT AUTHORITY.

26 (a) An inspector general may review any activity or operation of
27 the agency or a person in this state that is related to the

1 investigation, detection, or prevention of fraud, waste, abuse, or
2 employee misconduct in an agency program or state or federally
3 funded program implemented, administered, or overseen by or for the
4 agency.

5 (b) The office shall conduct reviews and inspections to
6 protect the public and detect and prevent fraud, waste, and abuse in
7 the provision or funding of services or programs described by
8 Subsection (a).

9 (c) The office shall conduct internal affairs
10 investigations in instances of suspected fraud, waste, and abuse
11 and in instances of suspected misconduct by employees, contractors,
12 subcontractors, and vendors.

13 (d) A state agency or the governing body or governing
14 officer of a state agency may not impair, prohibit, or attempt to
15 influence the inspector general in initiating, conducting, or
16 completing a review.

17 (e) An inspector general may conduct reviews, including
18 financial or performance audits regarding the use and effectiveness
19 of state or federal funds, including contract and grant funds,
20 administered by a person or state agency receiving the funds in
21 connection with an agency or state or federally funded program
22 implemented, administered, or overseen by or for the agency.

23 Sec. 422.202. INITIATION OF REVIEW. An inspector general
24 may initiate a review:

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

26 (2) at the request of the agency or the governing body
27 or governing officer of the agency; or

1 (3) based on a complaint from any source concerning a
2 matter described by Section 422.201.

3 Sec. 422.203. ACCESS TO INFORMATION. To further a review
4 conducted by the office, an inspector general is entitled to access
5 all books, records, accounts, documents, reports, vouchers,
6 databases, systems, or other information, including confidential
7 information, electronic data, and internal records relevant to the
8 functions of the office that are maintained by or for a person,
9 state agency, or provider, if applicable, in connection with an
10 agency or a state or federally funded program implemented,
11 administered, or overseen by or for the agency.

12 Sec. 422.204. COOPERATION REQUIRED. To further a review
13 conducted by an inspector general, the inspector general is
14 entitled to full and unrestricted access to all offices, limited
15 access or restricted areas, employees, equipment, and computers,
16 including areas, equipment, and computers that contain
17 confidential information and internal records, relevant to the
18 functions of the office that are maintained by or for a person,
19 agency, or provider, if applicable, in connection with an agency or
20 a state or federally funded program implemented, administered, or
21 overseen by or for the agency.

22 Sec. 422.205. SUBPOENAS. (a) An inspector general may
23 issue a subpoena to compel the attendance of a relevant witness or
24 the production, for inspection or copying, of relevant evidence in
25 connection with a review conducted under this subchapter.

26 (b) A subpoena may be served personally or by certified
27 mail.

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

4 (d) On finding that good cause exists for issuing the
5 subpoena, the court shall order the person to comply with the
6 subpoena. The court may hold in contempt a person who fails to obey
7 the court order.

8 (e) The reimbursement of the expenses of a witness whose
9 attendance is compelled under this section is governed by Section
10 2001.103.

11 Sec. 422.206. COOPERATION WITH LAW ENFORCEMENT OFFICIALS
12 AND OTHER ENTITIES. (a) An inspector general may provide
13 information and evidence relating to criminal acts to the state
14 auditor's office and appropriate law enforcement officials.

15 (b) An inspector general may refer matters for further
16 civil, criminal, and administrative action to appropriate
17 administrative and prosecutorial agencies, including the attorney
18 general.

19 (c) An inspector general may enter into a memorandum of
20 understanding with a law enforcement or prosecutorial agency,
21 including the office of the attorney general, to assist in
22 conducting a review under this subchapter.

23 Sec. 422.207. COOPERATION AND COORDINATION WITH STATE
24 AUDITOR. (a) The state auditor may, on request of an inspector
25 general, provide appropriate information or other assistance to an
26 inspector general or the office, as determined by the state
27 auditor.

1 (b) An inspector general may meet with the state auditor's
2 office to coordinate a review conducted under this subchapter,
3 share information, or schedule work plans.

4 (c) The state auditor is entitled to access all information
5 maintained by an inspector general, including vouchers, electronic
6 data, internal records, and information obtained under Section
7 422.203 or subject to Section 422.254.

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

11 [Sections 422.208-422.250 reserved for expansion]

12 SUBCHAPTER F. REPORTS

13 Sec. 422.251. PERIODIC REPORTING TO STATE AUDITOR AND
14 AGENCY REQUIRED. An inspector general shall timely inform the
15 state auditor and the agency director of the initiation of a review
16 of an agency program and the ongoing status of each review.

17 Sec. 422.252. REPORTING OFFICE FINDINGS. An inspector
18 general shall report the findings for any review conducted under
19 Subchapter E to:

20 (1) the governing body or governing officer of the
21 agency, as applicable;

22 (2) the governor;

23 (3) the lieutenant governor;

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

25 (5) the state auditor's office; and

26 (6) appropriate law enforcement and prosecutorial
27 agencies, including the office of the attorney general, if the

1 findings suggest the probability of criminal conduct.

2 Sec. 422.253. FLAGRANT VIOLATIONS; IMMEDIATE REPORT. An
3 inspector general shall immediately report to the governing body or
4 governing officer of the agency, as applicable, the governor's
5 general counsel, and the state auditor a problem the inspector
6 general determines is particularly serious or flagrant relating to
7 the administration of a program, operation of a state agency, or
8 interference with an inspector general review.

9 Sec. 422.254. INFORMATION CONFIDENTIAL. (a) Except as
10 provided by this section and Sections 422.251, 422.252, 531.103,
11 and 531.1031, all information and material compiled or maintained
12 by an inspector general during a review under this chapter is:

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

15 (2) not subject to disclosure, discovery, subpoena, or
16 other means of legal compulsion for release to anyone other than the
17 state auditor's office, the agency, or the office or its agents
18 involved in the review related to that information or material.

19 (b) As an inspector general determines appropriate based on
20 evidence sufficient to support an allegation, information relating
21 to a review may be disclosed to:

22 (1) a law enforcement agency;

23 (2) the attorney general's office;

24 (3) the state auditor's office; or

25 (4) the agency.

26 (c) A person that receives information under Subsection (b)
27 may not disclose the information except to the extent that

1 disclosure is consistent with the authorized purpose for which the
2 person first obtained the information.

3 Sec. 422.255. COSTS. (a) An inspector general shall
4 maintain information regarding the cost of reviews.

5 (b) The inspector general may cooperate with appropriate
6 administrative and prosecutorial agencies, including the office of
7 the attorney general, in recovering costs incurred under this
8 chapter from nongovernmental entities, including contractors or
9 individuals involved in:

10 (1) violations of applicable state or federal rules or
11 statutes;

12 (2) abusive or wilful misconduct; or

13 (3) violations of a provider contract or program
14 policy.

15 (c) The office of the attorney general, in all criminal
16 prosecutions under this chapter, shall request that the court order
17 restitution to be made to the appropriate agency as a condition of
18 probation or parole.

19 [Sections 422.256-422.300 reserved for expansion]

20 SUBCHAPTER G. PENALTIES

21 Sec. 422.301. ADMINISTRATIVE OR CIVIL PENALTY; INJUNCTION.

22 (a) The office may:

23 (1) act for a state agency in the assessment by the
24 office of administrative or civil penalties the agency is
25 authorized to assess under applicable law; and

26 (2) request that the attorney general obtain an
27 injunction to prevent a person from disposing of an asset

1 identified by the office as potentially subject to recovery by the
2 office due to the person's fraud, waste, or abuse.

3 (b) If the office imposes an administrative or civil penalty
4 under Subsection (a) for an agency:

5 (1) the agency may not impose an administrative or
6 civil penalty against the same person for the same violation; and

7 (2) the office shall impose the penalty under
8 applicable rules of the office, this chapter, and applicable laws,
9 including laws governing the imposition of a penalty by the agency.

10 SECTION 2. Article 2.12, Code of Criminal Procedure, is
11 amended to read as follows:

12 Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace
13 officers:

14 (1) sheriffs, their deputies, and those reserve
15 deputies who hold a permanent peace officer license issued under
16 Chapter 1701, Occupations Code;

17 (2) constables, deputy constables, and those reserve
18 deputy constables who hold a permanent peace officer license issued
19 under Chapter 1701, Occupations Code;

20 (3) marshals or police officers of an incorporated
21 city, town, or village, and those reserve municipal police officers
22 who hold a permanent peace officer license issued under Chapter
23 1701, Occupations Code;

24 (4) rangers and officers commissioned by the Public
25 Safety Commission and the Director of the Department of Public
26 Safety;

27 (5) investigators of the district attorneys', criminal

1 district attorneys', and county attorneys' offices;

2 (6) law enforcement agents of the Texas Alcoholic
3 Beverage Commission;

4 (7) each member of an arson investigating unit
5 commissioned by a city, a county, or the state;

6 (8) officers commissioned under Section 37.081,
7 Education Code, or Subchapter E, Chapter 51, Education Code;

8 (9) officers commissioned by the General Services
9 Commission;

10 (10) law enforcement officers commissioned by the
11 Parks and Wildlife Commission;

12 (11) airport police officers commissioned by a city
13 with a population of more than 1.18 million that operates an airport
14 that serves commercial air carriers;

15 (12) airport security personnel commissioned as peace
16 officers by the governing body of any political subdivision of this
17 state, other than a city described by Subdivision (11), that
18 operates an airport that serves commercial air carriers;

19 (13) municipal park and recreational patrolmen and
20 security officers;

21 (14) security officers and investigators commissioned
22 as peace officers by the comptroller;

23 (15) officers commissioned by a water control and
24 improvement district under Section 49.216, Water Code;

25 (16) officers commissioned by a board of trustees
26 under Chapter 54, Transportation Code;

27 (17) investigators commissioned by the Texas Medical

1 Board;

2 (18) officers commissioned by the board of managers of
3 the Dallas County Hospital District, the Tarrant County Hospital
4 District, or the Bexar County Hospital District under Section
5 281.057, Health and Safety Code;

6 (19) county park rangers commissioned under
7 Subchapter E, Chapter 351, Local Government Code;

8 (20) investigators employed by the Texas Racing
9 Commission;

10 (21) officers commissioned under Chapter 554,
11 Occupations Code;

12 (22) officers commissioned by the governing body of a
13 metropolitan rapid transit authority under Section 451.108,
14 Transportation Code, or by a regional transportation authority
15 under Section 452.110, Transportation Code;

16 (23) investigators commissioned by the attorney
17 general under Section 402.009, Government Code;

18 (24) security officers and investigators commissioned
19 as peace officers under Chapter 466, Government Code;

20 (25) an officer employed by the Department of State
21 Health Services under Section 431.2471, Health and Safety Code;

22 (26) officers appointed by an appellate court under
23 Subchapter F, Chapter 53, Government Code;

24 (27) officers commissioned by the state fire marshal
25 under Chapter 417, Government Code;

26 (28) an investigator commissioned by the commissioner
27 of insurance under Section 701.104, Insurance Code;

1 (29) apprehension specialists [~~and inspectors~~
2 ~~general~~] commissioned by the Texas Youth Commission as officers
3 under Section [~~Sections 61.0451 and~~] 61.0931, Human Resources Code;

4 (30) officers appointed by the inspector general of
5 the Texas Department of Criminal Justice under Section 493.019,
6 Government Code;

7 (31) investigators commissioned by the Commission on
8 Law Enforcement Officer Standards and Education under Section
9 1701.160, Occupations Code;

10 (32) commission investigators commissioned by the
11 Texas Private Security Board under Section 1702.061(f),
12 Occupations Code;

13 (33) the fire marshal and any officers, inspectors, or
14 investigators commissioned by an emergency services district under
15 Chapter 775, Health and Safety Code;

16 (34) officers commissioned by the State Board of
17 Dental Examiners under Section 254.013, Occupations Code, subject
18 to the limitations imposed by that section; [~~and~~]

19 (35) investigators commissioned by the Texas Juvenile
20 Probation Commission as officers under Section 141.055, Human
21 Resources Code; and

22 (36) officers commissioned by the office of inspector
23 general established under Chapter 422, Government Code.

24 SECTION 3. (a) A person serving on the effective date of
25 this Act as inspector general for a state agency subject to Chapter
26 422, Government Code, as added by this Act, shall continue to serve
27 as the inspector general for the agency under Chapter 422,

1 Government Code, as added by this Act, until February 1, 2011, and
2 may be reappointed under Chapter 422 if the person has the
3 qualifications required under that chapter.

4 (b) Not later than February 1, 2011, and except as provided
5 by Subsection (a) of this section, the governor shall appoint the
6 inspector general for the office of inspector general and an
7 inspector general for each state agency subject to Chapter 422,
8 Government Code, as added by this Act, to a term expiring February
9 1, 2013.

10 SECTION 4. A contract or proceeding primarily related to a
11 function transferred to the office of inspector general established
12 under this Act is transferred to the office. The transfer does not
13 affect the status of a proceeding or the validity of a contract.

14 SECTION 5. (a) All personnel and assets currently assigned
15 to the inspector general of a state agency subject to Chapter 422,
16 Government Code, as added by this Act, shall be promptly
17 transferred to the office of inspector general for that agency
18 established under Chapter 422 along with any equipment, documents,
19 and records currently assigned to or used by the inspector general
20 of that agency. Inventory of personnel, equipment, documents,
21 records, and assets to be transferred under this section shall be
22 accomplished jointly by the transferring agency and the inspector
23 general considered appointed under Chapter 422 for that agency.
24 All funds previously appropriated or used, from any source, by the
25 transferring agency in support of the transferred functions,
26 personnel, equipment, documents, records, or assets shall also be
27 contemporaneously transferred to the office.

1 (b) For purposes of this section, "currently assigned"
2 means:

3 (1) all personnel and vacant full-time equivalent
4 positions assigned to or supporting a transferred function at any
5 time during the state fiscal biennium beginning September 1, 2007;
6 and

7 (2) all inventory and equipment assigned to a
8 transferred function or transferring personnel or that was in the
9 possession of transferring personnel on or at any time after
10 October 31, 2008.

11 (c) All state and federal funding, including funding for
12 overhead costs, support costs, and lease or colocation lease costs,
13 for the functions to be transferred to an office of inspector
14 general established under Chapter 422, Government Code, as added by
15 this Act, shall be reallocated to that office.

16 (d) For purposes of federal single state agency funding
17 requirements, any federal funds that may not be appropriated
18 directly to the office of inspector general for an agency subject to
19 Chapter 422, Government Code, as added by this Act, shall be
20 transferred from the single state agency receiving the funds to the
21 office of inspector general if the funds are intended for a function
22 performed by the office.

23 SECTION 6. On the effective date of this Act:

24 (1) all functions, activities, employees, rules,
25 forms, money, property, contracts, memorandums of understanding,
26 records, and obligations of a previously established office of
27 inspector general of an agency subject to Chapter 422, Government

1 Code, as added by this Act, become functions, activities,
2 employees, rules, forms, money, property, contracts, memorandums
3 of understanding, records, and obligations of the office of
4 inspector general established under Chapter 422, without a change
5 in status; and

6 (2) all money appropriated for the operations of a
7 previously established office of inspector general at an agency
8 subject to Chapter 422, Government Code, as added by this Act,
9 including money for providing administrative support, is
10 considered appropriated to the office of inspector general
11 established under Chapter 422.

12 SECTION 7. (a) Each agency subject to Chapter 422,
13 Government Code, as added by this Act, shall take all action
14 necessary to provide for the orderly transfer of the assets and
15 responsibilities of any previously established office of inspector
16 general for that agency to the office of inspector general
17 established under Chapter 422.

18 (b) A rule or form adopted by a previously established
19 office of inspector general of an agency subject to Chapter 422,
20 Government Code, as added by this Act, is a rule or form of the
21 office of inspector general established under Chapter 422 and
22 remains in effect until changed by the office of inspector general.

23 (c) A reference in law or administrative rule to a
24 previously established office of inspector general of an agency
25 subject to Chapter 422, Government Code, as added by this Act, means
26 the office of inspector general established under Chapter 422.

27 SECTION 8. If before implementing any provision of this Act

1 a state agency determines that a waiver or authorization from a
2 federal agency is necessary for implementation of that provision,
3 the agency affected by the provision shall request the waiver or
4 authorization and may delay implementing that provision until the
5 waiver or authorization is granted.

6 SECTION 9. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2009.