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HOUSE BILL NO. 571

Offered January 8, 2014

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A *BILL to amend and reenact §§ 2.2-309, 2.2-309.1, 2.2-309.3, 2.2-309.4, and 2.2-3705.3 of the Code of Virginia, relating to the Office of the State Inspector General; powers and duties; records exempt under the Virginia Freedom of Information Act.*

 Patron—Landes

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-309, 2.2-309.1, 2.2-309.3, 2.2-309.4, and 2.2-3705.3 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-309. Powers and duties of State Inspector General.

A. The State Inspector General shall have power and duty to:

1. Operate and manage the Office and employ such personnel as may be required to carry out the provisions of this chapter;

2. Make and enter contracts and agreements as may be necessary and incidental to carry out the provisions of this chapter and apply for and accept grants from the United States government and agencies and instrumentalities thereof, and any other source, in furtherance of the provisions of this chapter;

3. Receive complaints from whatever source that allege fraud, waste, including task or program duplication, abuse, or corruption by a state agency or nonstate agency or by any officer or employee of the foregoing and determine whether the complaints give reasonable cause to investigate;

4. Investigate the management and operations of state agencies and nonstate agencies to determine whether acts of fraud, waste, abuse, or corruption have been committed or are being committed by state officers or employees or any officers or employees of a nonstate agency, including any allegations of criminal acts affecting the operations of state agencies or nonstate agencies. However, no investigation of an elected official of the Commonwealth to determine whether a criminal violation has occurred, is occurring, or is about to occur under the provisions of § 52-8.1 shall be initiated, undertaken, or continued except upon the request of the Governor, the Attorney General, or a grand jury;

5. Prepare a detailed report of each investigation stating whether fraud, waste, abuse, or corruption has been detected. If fraud, waste, abuse, or corruption is detected, the report shall (i) identify the person committing the wrongful act or omission, (ii) describe the wrongful act or omission, and (iii) describe any corrective measures taken by the state agency or nonstate agency in which the wrongful act or omission was committed to prevent recurrences of similar actions;

6. Provide timely notification to the appropriate attorney for the Commonwealth and law-enforcement agencies whenever the State Inspector General has reasonable grounds to believe there has been a violation of state criminal law;

7. Administer the Fraud and Abuse Whistle Blower Reward Fund created pursuant to § 2.2-3014;

8. Oversee the Fraud, Waste and Abuse Hotline;

9. Conduct performance reviews of state agencies to *assess the effectiveness, efficiency, or economy of programs and to ascertain, among other things, that sums appropriated have been or are being expended for the purposes for which the appropriation was made; evaluate the effectiveness of the programs in accomplishing such purpose;* and prepare a report for each performance review detailing any findings or recommendations for improving the efficiency, *effectiveness, or economy* of state agencies, including recommending changes in the law to the Governor and the General Assembly that are necessary to address such findings;

10. Coordinate and require standards for those internal audit programs in existence as of July 1, 2012, and for other internal audit programs in state agencies and nonstate agencies as needed in order to ensure that the Commonwealth's assets are subject to appropriate internal management controls;

11. As deemed necessary, assess the condition of the accounting, financial, and administrative controls of state agencies and nonstate agencies and make recommendations to protect the Commonwealth's assets;

12. Assist agency internal auditing programs with technical auditing issues and coordinate and provide training to the Commonwealth's internal auditors;

13. Assist citizens in understanding their rights and the processes available to them to express concerns regarding the activities of a state agency or nonstate agency or any officer or employee of the

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59 foregoing;

60 14. Maintain data on inquiries received, the types of assistance requested, any actions taken, and the
61 disposition of each such matter;

62 15. Upon request, assist citizens in using the procedures and processes available to express concerns
63 regarding the activities of a state or nonstate agency or any officer or employee of the foregoing;

64 16. Ensure that citizens have access to the services provided by the State Inspector General and that
65 citizens receive timely responses to their inquiries from the State Inspector General or his
66 representatives; and

67 17. Do all acts necessary or convenient to carry out the purposes of this chapter.

68 B. If the State Inspector General receives a complaint from whatever source that alleges fraud, waste,
69 abuse, or corruption by a public institution of higher education or any of its officers or employees, the
70 State Inspector General shall ~~may~~ refer the complaint to the internal audit department of the public
71 institution of higher education for investigation, ~~unless~~. *However, if the complaint concerns the president*
72 *of the institution or its internal audit department, in which case the investigation shall be conducted by*
73 *the State Inspector General.*

74 The public institution of higher education shall provide periodic updates on the status of any
75 investigation and make the results of any such investigation available to the State Inspector General.

76 **§ 2.2-309.1. Additional powers and duties; behavioral health and developmental services.**

77 A. The definitions found in § 37.2-100 shall apply mutatis mutandis to the terms used in this section.

78 B. In addition to the duties set forth in this chapter, the State Inspector General shall have the
79 following powers and duties to:

80 1. Provide inspections of and make policy and operational recommendations for state facilities and
81 for providers, including licensed mental health treatment units in state correctional facilities, in order to
82 prevent problems, abuses, and deficiencies in and improve the effectiveness of their programs and
83 services. The State Inspector General shall provide oversight and conduct announced and unannounced
84 inspections of state facilities and of providers, including licensed mental health treatment units in state
85 correctional facilities, on an ongoing basis in response to specific complaints of abuse, neglect, or
86 inadequate care and as a result of monitoring serious incident reports and reports of abuse, neglect, or
87 inadequate care or other information received. The State Inspector General shall conduct unannounced
88 inspections at each state facility at least once annually;

89 2. Inspect, monitor, and review the quality of services provided in state facilities and by providers as
90 defined in § 37.2-403, including licensed mental health treatment units in state correctional facilities;

91 3. Access any and all information, including confidential consumer information, related to the
92 delivery of services to consumers in state facilities or served by providers, including licensed mental
93 health treatment units in state correctional facilities. However, the State Inspector General shall not be
94 given access to any proceedings, minutes, records, or reports of providers that are privileged under
95 § 8.01-581.17, except that the State Inspector General shall be given access to any privileged
96 information in state facilities and licensed mental health treatment units in state correctional facilities.
97 All consumer information shall be maintained by the State Inspector General as confidential in the same
98 manner as is required by the agency or provider from which the information was obtained;

99 4. Keep the General Assembly and the Joint Commission on Health Care fully and currently
100 informed by means of reports required by § 2.2-313 concerning significant problems, abuses, and
101 deficiencies relating to the administration of the programs and services of state facilities and of
102 providers, including licensed mental health treatment units in state correctional facilities, to recommend
103 corrective actions concerning the problems, abuses, and deficiencies, and report on the progress made in
104 implementing the corrective actions;

105 5. Review, comment on, and make recommendations about, as appropriate, any reports prepared by
106 the Department of Behavioral Health and Developmental Services and the critical incident data collected
107 by the Department of Behavioral Health and Developmental Services in accordance with regulations
108 adopted under § 37.2-400 to identify issues related to quality of care, seclusion and restraint, medication
109 usage, abuse and neglect, staff recruitment and training, and other systemic issues;

110 6. Monitor, review, and ~~participate in the adoption of~~ comment on, as deemed necessary, the
111 regulations adopted by the State Board of Behavioral Health and Developmental Services; and

112 7. Receive reports, information, and complaints from the Commonwealth's designated protection and
113 advocacy system concerning issues related to quality of care provided in state facilities and by providers,
114 including licensed mental health treatment units in state correctional facilities, and conduct independent
115 reviews and investigations.

116 **§ 2.2-309.3. Additional powers and duties; adult corrections.**

117 A. The definitions found in § 53.1-1 shall apply mutatis mutandis to the terms used in this section.

118 B. In addition to the duties set forth in this chapter, the State Inspector General shall have the
119 following powers and duties to:

120 ~~1. Review power and duty to review~~, comment on, and make recommendations about, as appropriate,

121 any reports prepared by the Department of Corrections and any critical incident data collected by the
122 Department of Corrections in accordance with regulations adopted to identify issues related to quality of
123 care, seclusion and restraint, medication usage, abuse and neglect, staff recruitment and training, and
124 other systemic issues; and

125 2. Monitor and participate in the adoption of regulations by the Board.

126 C. Nothing in this section shall be construed to grant the Office any authority over the operation and
127 security of local jails that is not specified in other provisions of law.

128 **§ 2.2-309.4. Additional powers and duties; juvenile justice.**

129 A. The definitions found in § 66-12 shall apply mutatis mutandis to the terms used in this section.

130 B. In addition to the duties set forth in this chapter, the State Inspector General shall have the
131 following powers and duties to:

132 1. Review power and duty to review, comment on, and make recommendations about, as appropriate,
133 any reports prepared by the Department of Juvenile Justice and any critical incident data collected by
134 the Department of Juvenile Justice in accordance with regulations adopted to identify issues related to
135 quality of care, seclusion and restraint, medication usage, abuse and neglect, staff recruitment and
136 training, and other systemic issues; and

137 2. Monitor and participate in the adoption of regulations by the Board.

138 C. Nothing in this section shall be construed to grant the Office any authority over the operation and
139 security of detention homes that is not specified in other provisions of law.

140 **§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative**
141 **investigations.**

142 The following records are excluded from the provisions of this chapter but may be disclosed by the
143 custodian in his discretion, except where such disclosure is prohibited by law:

144 1. Confidential records of all investigations of applications for licenses and permits, and of all
145 licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State
146 Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer
147 Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of
148 Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice
149 Services.

150 2. Records of active investigations being conducted by the Department of Health Professions or by
151 any health regulatory board in the Commonwealth.

152 3. Investigator notes, and other correspondence and information, furnished in confidence with respect
153 to an active investigation of individual employment discrimination complaints made to the Department
154 of Human Resource Management or to such personnel of any local public body, including local school
155 boards as are responsible for conducting such investigations in confidence. However, nothing in this
156 section shall prohibit the disclosure of information taken from inactive reports in a form that does not
157 reveal the identity of charging parties, persons supplying the information or other individuals involved in
158 the investigation.

159 4. Records of active investigations being conducted by the Department of Medical Assistance
160 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

161 5. Investigative notes and other correspondence and information furnished in confidence with respect
162 to an investigation or conciliation process involving an alleged unlawful discriminatory practice under
163 the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance
164 with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1,
165 1987, in accordance with applicable law, relating to local human rights or human relations commissions.
166 However, nothing in this section shall prohibit the distribution of information taken from inactive reports
167 in a form that does not reveal the identity of the parties involved or other persons supplying
168 information.

169 6. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii)
170 lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or
171 regulations that cause abuses in the administration and operation of the lottery and any evasions of such
172 provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where
173 such official records have not been publicly released, published or copyrighted. All studies and
174 investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon
175 completion of the study or investigation.

176 7. Investigative notes, correspondence and information furnished in confidence, and records otherwise
177 exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of
178 Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority
179 as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and
180 Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General
181 with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation

182 initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) the committee or the auditor with respect to an
183 investigation or audit conducted pursuant to § 15.2-825; (vi) *internal auditors appointed by (a) state*
184 *agency heads or (b) the board of visitors of public institutions of higher education*; or ~~(vi)~~ (vii) the
185 auditors, appointed by the local governing body of any county, city or town or a school board, who by
186 charter, ordinance, or statute have responsibility for conducting an investigation of any officer,
187 department or program of such body. Records of completed investigations shall be disclosed in a form
188 that does not reveal the identity of the complainants or persons supplying information to investigators.
189 Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to,
190 the agency involved, the identity of the person who is the subject of the complaint, the nature of the
191 complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective
192 action, the identity of the person who is the subject of the complaint may be released only with the
193 consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure
194 required by this subdivision.

195 8. Information furnished in confidence to the Department of Human Resource Management with
196 respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda,
197 correspondence and other records resulting from any such investigation, consultation or mediation.
198 However, nothing in this section shall prohibit the distribution of information taken from inactive reports
199 in a form that does not reveal the identity of the parties involved or other persons supplying
200 information.

201 9. The names, addresses and telephone numbers of complainants furnished in confidence with respect
202 to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform
203 Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made
204 to a local governing body.

205 10. Records of active investigations being conducted by the Department of Criminal Justice Services
206 pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.),
207 and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

208 11. Records furnished to or prepared by the Board of Education pursuant to subsection D of
209 § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,
210 unauthorized alteration, or improper administration of tests by local school board employees responsible
211 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure
212 of records to (i) a local school board or division superintendent for the purpose of permitting such board
213 or superintendent to consider or to take personnel action with regard to an employee or (ii) any
214 requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity
215 of any person making a complaint or supplying information to the Board on a confidential basis and (b)
216 does not compromise the security of any test mandated by the Board.

217 12. Investigator notes, and other correspondence and information, furnished in confidence with
218 respect to an active investigation conducted by or for the Board of Education related to the denial,
219 suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure
220 of records to a local school board or division superintendent for the purpose of permitting such board or
221 superintendent to consider or to take personnel action with regard to an employee. Records of completed
222 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person
223 supplying information to investigators. The records disclosed shall include information regarding the
224 school or facility involved, the identity of the person who was the subject of the complaint, the nature
225 of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a
226 complaint or does not lead to corrective action, the identity of the person who was the subject of the
227 complaint may be released only with the consent of the subject person. No personally identifiable
228 information in the records regarding a current or former student shall be released except as permitted by
229 state or federal law.

230 13. Records, notes and information provided in confidence and related to an investigation by the
231 Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of
232 Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2,
233 or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that
234 has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is
235 not otherwise prohibited by law and does not reveal the identity of charging parties, complainants,
236 persons supplying information, witnesses or other individuals involved in the investigation.