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HOUSE BILL NO. 510

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact § 2.2-3705.3 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 3.2, consisting of sections numbered 2.2-307 through 2.2-313, relating to the State Inspector General.*

Patron—Brink

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 3.2, consisting of sections numbered 2.2-307 through 2.2-313 as follows:

CHAPTER 3.2.**OFFICE OF THE STATE INSPECTOR GENERAL.****§ 2.2-307. Definitions.***As used in this chapter:*

"State agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act. "State agency" shall not include the General Assembly, any court, and any county, city, or town.

"State employee" means any person who is regularly employed full time on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, no more often than biweekly, in whole or in part, by a state agency.

"State officer" means any person who is elected or appointed to a public office in a state agency.

§ 2.2-308. Office created; appointment of State Inspector General.

A. There is hereby created the Office of the State Inspector General, which shall be headed by a State Inspector General appointed by the Governor, subject to confirmation by the General Assembly. The State Inspector General shall be appointed for a six-year term. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of such term.

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

The State Inspector General shall have the power and duty to:

1. Operate and manage the Office of the State Inspector General 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. Conduct independent evaluations of the programs and activities of state agencies and nonstate agencies that receive state funds;

4. Receive complaints alleging (i) fraud; (ii) waste, including task or program duplication and inefficiency; (iii) abuse; or (iv) corruption and determine whether the complaints give reasonable cause to investigate;

5. Investigate the management and operations of state agencies to determine whether acts of fraud, waste, abuse, or corruption have been committed or are being committed by state officers or state employees;

6. 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 corrective measures taken by the state agency in which the wrongful act or omission was committed to prevent recurrences of similar actions;

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

8. Identify other state agencies that are also responsible for investigating, auditing, reviewing, or evaluating the management and operation of state agencies, and negotiate and enter into agreements with such agencies to share information and avoid duplication of effort;

9. Consult with state agencies and nonstate agencies receiving state funds and assist them in

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59 developing, implementing, and enforcing policies and procedures that will prevent or reduce the risk of
60 wrongful acts and omissions by their employees and eliminate duplication and inefficiency; and

61 10. Assist individual state agencies and nonstate agencies receiving state funds in developing clear
62 goals and objective measures of performance for programs and activities. The goals and objective
63 measures shall be a part of any independent evaluation conducted by the State Inspector General.

64 § 2.2-310. Program evaluation of state and nonstate agencies.

65 A. The State Inspector General shall develop a schedule for the evaluation of the programs and
66 activities of state agencies and nonstate agencies receiving state funding. The evaluation shall include,
67 but not be limited to, the following measures and determinations regarding such programs and
68 activities: (i) effectiveness, (ii) efficiency, (iii) cost, (iv) alternative service delivery options, and (v)
69 consolidation opportunities. Such evaluation shall also determine whether a particular program or
70 activity is appropriate to be continued as a government function. At the completion of the evaluation,
71 the State Inspector General shall furnish a report to the state or nonstate agency including any
72 recommendations to improve program effectiveness and efficiency. The State Inspector General shall
73 prepare a report of each evaluation and submit the report to the Governor immediately upon its
74 completion and to the General Assembly in its annual report. Nothing in this subsection shall be
75 construed to prevent the State Inspector General from conducting an evaluation that is unscheduled or
76 at the request of the Governor.

77 B. Within one year after an evaluation has been conducted pursuant to subsection A, the state or
78 nonstate agency that is the subject of the evaluation shall report to the State Inspector General on the
79 progress made toward performance goals and the implementation of any recommendations made by the
80 State Inspector General.

81 § 2.2-311. Subpoenas.

82 A. The State Inspector General or a designated subordinate may issue a subpoena for the
83 appearance of an individual before any hearing conducted by the Office of the Inspector General. The
84 subpoena shall be served by the appropriate sheriff's officer and enforced by the court of that
85 jurisdiction.

86 B. The State Inspector General may make an ex parte application to the circuit court for the city or
87 county wherein evidence sought is kept, for the issuance of a subpoena duces tecum in furtherance of an
88 investigation or to request production of any relevant records, documents, and physical or other
89 evidence of any person, partnership, association, or corporation located in the Commonwealth. The
90 court may issue and compel compliance with such a subpoena upon a showing of reasonable cause.
91 Upon determining that reasonable cause exists to believe that evidence may be destroyed or altered, the
92 court may issue a subpoena duces tecum requiring the immediate production of evidence.

93 § 2.2-312. Cooperation of state agencies and officers.

94 A. Each state agency and every state officer and state employee shall cooperate with, and provide
95 assistance to, the State Inspector General in the performance of any investigation. Each state agency
96 shall make its premises, equipment, personnel, books, records, and papers readily available to the State
97 Inspector General upon request.

98 B. The State Inspector General may enter upon the premises of any state agency at any time without
99 prior announcement, if necessary, to the successful completion of an investigation. In the course of an
100 investigation, the State Inspector General may question any state officer or state employee serving in,
101 and any person transacting business with, the state agency, and may inspect and copy any books,
102 records, or papers in the possession of the state agency. The State Inspector General shall preserve the
103 confidentiality of any information obtained from a state agency during the course of an investigation as
104 required by applicable state and federal law.

105 § 2.2-313. Reports.

106 A. The State Inspector General shall prepare an annual report summarizing the activities of the
107 Office. Such report shall include, but need not be limited to:

108 1. A description of any significant problems, abuses, and deficiencies related to the management or
109 operation of state agencies during the reporting period;

110 2. A description of the recommendations for corrective actions made by the Office during the
111 reporting period with respect to significant problems, abuses, or deficiencies identified;

112 3. An identification of each significant recommendation described in previous reports under this
113 section for which corrective action has not been completed;

114 4. A summary of matters referred to the attorneys for the Commonwealth and law-enforcement
115 agencies and actions taken on them during the reporting period; and

116 5. Information concerning the numbers of complaints received and types of investigations completed
117 by the Office during the reporting period.

118 B. The State Inspector General shall make copies of such report available to the public upon request
119 and in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

120 C. The State Inspector General shall report immediately to the Governor whenever the Office

becomes aware of particularly serious problems, abuses, or deficiencies relating to the management or operation of a state agency.

D. The State Inspector General may conduct such additional investigations and make such reports relating to the management and operation of state agencies as are, in the judgment of the State Inspector General, necessary or desirable.

E. Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted directly to the Governor and the General Assembly by the State Inspector General.

F. Records that are confidential under federal or state law shall be maintained as confidential by the State Inspector General and shall not be further disclosed, except as permitted by law.

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

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

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

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

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

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

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

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

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) *State Inspector General*; (iii) Joint Legislative Audit and Review Commission; ~~(iii)~~(iv) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); ~~(iv)~~(v) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; ~~(v)~~(vi) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or ~~(vi)~~(vii) auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this ~~section~~ *subdivision*, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local

governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence received or maintained by the Office or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

9. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

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

11. Records of active investigations being conducted by the Department of Criminal Justice Services 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.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

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

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

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