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## HOUSE BILL NO. 1053

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws  
on January 28, 2014)

(Patrons Prior to Substitute—Delegates Miller and Landes [HB 287])

*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; internal auditors; Virginia Freedom of Information Act.*

**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, *and independent contractors of state agencies* to determine whether acts of fraud, waste, abuse, or corruption have been committed or are being committed by state officers or employees *or independent contractors of a state agency* 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 efficiency, effectiveness, 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 foregoing;

14. Maintain data on inquiries received, the types of assistance requested, any actions taken, and the

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60 disposition of each such matter;

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

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

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

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

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~~ As deemed necessary, monitor, review, and ~~participate in the adoption of~~ comment on  
111 regulations adopted by the 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~~ review, comment on, and make recommendations about, as appropriate, any reports  
121 prepared by the Department of Corrections and any critical incident data collected by the Department of

*Corrections* in accordance with regulations adopted to identify issues related to quality of care, seclusion and restraint, medication usage, abuse and neglect, staff recruitment and training, and other systemic issues; ~~and~~

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

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

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

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

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

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

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

C. Nothing in this section shall be construed to grant the Office any authority over the operation and security of detention homes that is not specified in other provisions of 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 § 2.2-524, 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 (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) 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) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation 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 the head of a*  
184 *state agency or the board of visitors of a public institution of higher education*; or ~~(vi)~~ (vii) the auditors,  
185 appointed by the local governing body of any county, city or town or a school board, who by charter,  
186 ordinance, or statute have responsibility for conducting an investigation of any officer, department or  
187 program of such body. Records of completed investigations shall be disclosed in a form that does not  
188 reveal the identity of the complainants or persons supplying information to investigators. Unless  
189 disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the  
190 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.