

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1146

Short Title: Agency Inspectors General.

(Public)

Sponsors: Representative Hardaway.

Referred to: State Government, if favorable, Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE POSITION OF INSPECTOR GENERAL IN EACH STATE AGENCY TO REDUCE FRAUD, WASTE, AND ABUSE, AND TO ENACT A WHISTLE-BLOWER STATUTE TO PROTECT STATE EMPLOYEES WHO REPORT FRAUD, WASTE, AND ABUSE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding two new Articles to read:

"ARTICLE 71.

"Inspectors General.

"§ 143-681. Agency inspectors general.

(a) For the purposes of this section:

(1) 'State agency' means each department created pursuant to Chapter 143A or 143B of the General Statutes, the Judicial Branch, and The University of North Carolina.

(2) 'Agency head' means the Governor, a Council of State member, a cabinet secretary, the Chief Justice of the Supreme Court, and the President of the University of North Carolina.

(b) The Office of Inspector General is hereby established in each State agency to provide a central point for coordination of and responsibility for activities that promote

1 accountability, integrity, and efficiency in government. It shall be the duty and
2 responsibility of each inspector general, with respect to the State agency in which the
3 office is established, to:

- 4 (1) Advise in the development of performance measures, standards, and
5 procedures for the evaluation of State agency programs.
- 6 (2) Assess the reliability and validity of the information provided by the
7 State agency on performance measures and standards, and make
8 recommendations for improvement, if necessary.
- 9 (3) Review the actions taken by the State agency to improve program
10 performance and meet program standards and make recommendations
11 for improvement, if necessary.
- 12 (4) Provide direction for, supervise, and coordinate audits, investigations,
13 and management reviews relating to the programs and operations of the
14 State agency, except that when the inspector general does not possess
15 the qualifications specified in subsection (d) of this section, the director
16 of auditing shall conduct such audits.
- 17 (5) Conduct, supervise, or coordinate other activities carried out or financed
18 by that State agency for the purpose of promoting economy and
19 efficiency in the administration of, or preventing and detecting fraud
20 and abuse in, its programs and operations.
- 21 (6) Keep such agency head informed concerning fraud, abuses, and
22 deficiencies relating to programs and operations administered or
23 financed by the State agency, recommend corrective action concerning
24 fraud, abuses, and deficiencies, and report on the progress made in
25 implementing corrective action.
- 26 (7) Ensure effective coordination and cooperation between the State
27 Auditor, federal auditors, and other governmental bodies with a view
28 toward avoiding duplication.
- 29 (8) Review, as appropriate, rules relating to the programs and operations of
30 such State agency and make recommendations concerning their impact.
- 31 (9) Ensure that an appropriate balance is maintained between audit,
32 investigative, and other accountability activities.
- 33 (c) (1) The inspector general shall be appointed by the agency head. For
34 agencies under the direction of the Governor, the appointment shall be
35 made after notifying the Governor in writing, at least seven days prior to
36 an offer of employment, of the agency head's intention to hire the
37 inspector general.
- 38 (2) Each inspector general shall report to and be under the general
39 supervision of the agency head and shall not be subject to supervision
40 by any other employee of the State agency. The inspector general shall
41 be appointed without regard to political affiliation.
- 42 (3) An inspector general may be removed from office by the agency head.
43 For agencies under the direction of the Governor, the agency head shall

1 notify the Governor, in writing, of the intention to terminate the
2 inspector general at least seven days prior to the removal. For State
3 agencies under the direction of the Governor and Cabinet, the agency
4 head shall notify the Governor and Cabinet in writing of the intention to
5 terminate the inspector general at least seven days prior to the removal.

6 (4) The agency head shall not prevent or prohibit the inspector general or
7 director of auditing from initiating, carrying out, or completing any
8 audit or investigation.

9 (d) To ensure that State agency audits are performed in accordance with applicable
10 auditing standards, the inspector general or the director of auditing within the inspector
11 general's office shall possess the following qualifications:

12 (1) A bachelors degree from an accredited college or university with a
13 major in accounting, or with a major in business which includes five
14 courses in accounting, and five years of experience as an internal
15 auditor or independent postauditor, electronic data processing auditor,
16 accountant, or any combination thereof. The experience shall at a
17 minimum consist of audits of units of government or private business
18 enterprises, operating for profit or not for profit;

19 (2) A masters degree in accounting, business administration, or public
20 administration from an accredited college or university and four years of
21 experience as required in subdivision (1) of this subsection; or

22 (3) A certified public accountant license issued pursuant to law or a
23 certified internal audit certificate issued by the Institute of Internal
24 Auditors or earned by examination, and four years of experience as
25 required in subdivision (1) of this subsection.

26 (e) In carrying out the auditing duties and responsibilities of this Article, each
27 inspector general shall review and evaluate internal controls necessary to ensure the fiscal
28 accountability of the State agency. The inspector general shall conduct financial,
29 compliance, electronic data processing, and performance audits of the agency and prepare
30 audit reports of his or her findings. The scope and assignment of the audits shall be
31 determined by the inspector general; however, the agency head may at any time direct the
32 inspector general to perform an audit of a special program, function, or organizational
33 unit. The performance of the audit shall be under the direction of the inspector general,
34 except that if the inspector general does not possess the qualifications specified in
35 subsection (d) of this section, the State Auditor shall perform the functions listed in this
36 subsection.

37 Such audits shall be conducted in accordance with the current Standards for the
38 Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or
39 Statements on Internal Auditing Standards published by the Institute of Internal Auditors,
40 Inc., or, where appropriate, in accordance with generally accepted governmental auditing
41 standards. All audit reports issued by internal audit staff shall include a statement that the
42 audit was conducted pursuant to the appropriate standards.

1 Audit workpapers and reports shall be public records to the extent that they do not
2 include information which has been made confidential and exempt from the provisions of
3 Chapter 132 of the General Statutes pursuant to law. However, when the inspector
4 general or a member of the staff receives from an individual a complaint or information
5 that falls within the definition provided in the Whistle-Blower's Act, the name or identity
6 of the individual shall not be disclosed to anyone else without the written consent of the
7 individual, unless the inspector general determines that such disclosure is unavoidable
8 during the course of the audit or investigation.

9 The inspector general and the staff shall have access to any records, data, and other
10 information of the State agency he or she deems necessary to carry out his or her duties.
11 The inspector general is also authorized to request such information or assistance as may
12 be necessary from the State agency or from any federal, State, or local government entity.

13 At the conclusion of each audit, the inspector general shall submit preliminary
14 findings and recommendations to the person responsible for supervision of the program
15 function or operational unit who shall respond to any adverse findings within 20 working
16 days after receipt of the tentative findings. Such response and the inspector general's
17 rebuttal to the response shall be included in the final audit report.

18 The inspector general shall submit the final report to the agency head and to the State
19 Auditor.

20 The State Auditor, in connection with any audit of the same agency pursuant to law,
21 shall give appropriate consideration to internal audit reports and the resolution of findings
22 therein. The Joint Legislative Commission on Governmental Operations may inquire into
23 the reasons or justifications for failure of the agency head to correct the deficiencies
24 reported in internal audits that are also reported by the State Auditor and shall take
25 appropriate action. The State Auditor shall also review a sample of each agency's internal
26 audit reports at least once every three years to determine compliance with current
27 Standards for the Professional Practice of Internal Auditing or, if appropriate, generally
28 accepted governmental auditing standards. If the State Auditor finds that these standards
29 have not been complied with, the State Auditor shall include a statement of this fact in
30 the audit report of the agency.

31 The inspector general shall monitor the implementation of the State agency's response
32 to any audit of the State agency conducted by the State Auditor pursuant to law. No later
33 than six months after the State Auditor publishes a report of the audit of the State agency,
34 the inspector general shall report to the agency head on the status of corrective actions
35 taken. A copy of such report shall be filed with the Joint Legislative Commission on
36 Governmental Operations.

37 The inspector general shall develop long-term and annual audit plans based on the
38 findings of periodic risk assessments. The plan, where appropriate, should include
39 postaudit samplings of payments and accounts. The plan shall show the individual audits
40 to be conducted during each year and related resources to be devoted to the respective
41 audits. The State Controller may utilize audits performed by the inspectors general. For
42 State agencies under the Governor, the audit plans shall be submitted to the Governor's

1 Chief Inspector General. The plan shall be submitted to the agency head for approval. A
2 copy of the approved plan shall be submitted to the State Auditor.

3 (f) In carrying out the investigative duties and responsibilities specified in this
4 section, each inspector general shall initiate, conduct, supervise, and coordinate
5 investigations designed to detect, deter, prevent, and eradicate fraud, waste,
6 mismanagement, misconduct, and other abuses in State government. For these purposes,
7 each State agency shall:

8 (1) Receive complaints and coordinate all activities of the agency as
9 required by the Whistle-Blower's Act.

10 (2) Receive and consider the complaints which do not meet the criteria for
11 an investigation under the Whistle-Blower's Act and conduct, supervise,
12 or coordinate such inquiries, investigations, or reviews as the inspector
13 general deems appropriate.

14 (3) Report expeditiously to the State Bureau of Investigation or other law
15 enforcement agencies, as appropriate, whenever the inspector general
16 has reasonable grounds to believe there has been a violation of criminal
17 law.

18 (4) Conduct investigations and other inquiries free of actual or perceived
19 impairment to the independence of the inspector general or the inspector
20 general's office. This shall include freedom from any interference with
21 investigations and timely access to records and other sources of
22 information.

23 (5) Submit in a timely fashion final reports on investigations conducted by
24 the inspector general to the agency head, except for whistle-blower's
25 investigations, which shall be conducted and reported pursuant to the
26 Whistle-Blower's Act

27 (g) Each inspector general shall, not later than September 30 of each year, prepare
28 an annual report summarizing the activities of the office during the immediately
29 preceding State fiscal year. The final report shall be furnished to the agency head. Such
30 report shall include, but need not be limited to:

31 (1) A description of activities relating to the development, assessment, and
32 validation of performance measures.

33 (2) A description of significant abuses and deficiencies relating to the
34 administration of programs and operations of the agency disclosed by
35 investigations, audits, reviews, or other activities during the reporting
36 period.

37 (3) A description of the recommendations for corrective action made by the
38 inspector general during the reporting period with respect to significant
39 problems, abuses, or deficiencies identified.

40 (4) The identification of each significant recommendation described in
41 previous annual reports on which corrective action has not been
42 completed.

1 (5) A summary of each audit and investigation completed during the
2 reporting period.

3 (h) Each agency inspector general shall, to the extent both necessary and
4 practicable, include on his or her staff individuals with electronic data processing
5 auditing experience.

7 "ARTICLE 72.

8 "Whistle-Blower's Act.

9 "**§ 143-691. Adverse action against employee for disclosing information of specified**
10 **nature prohibited; employee remedy and relief.**

11 (a) This Article may be cited as the 'Whistle-Blower's Act.'

12 (b) It is the intent of the General Assembly to prevent agencies or independent
13 contractors from taking retaliatory action against an employee who reports to an
14 appropriate agency violations of law on the part of a public employer or independent
15 contractor that create a substantial and specific danger to the public's health, safety, or
16 welfare. It is further the intent of the General Assembly to prevent agencies or
17 independent contractors from taking retaliatory action against any person who discloses
18 information to an appropriate agency alleging improper use of governmental office, gross
19 waste of funds, or any other abuse or gross neglect of duty on the part of an agency,
20 public officer, or employee.

21 (c) As used in this Article, unless otherwise specified, the following words or
22 terms shall have the meanings indicated:

23 (1) 'Agency' means any State, regional, county, local, or municipal
24 government entity, whether executive, judicial, or legislative; any
25 official, officer, department, division, bureau, commission, authority, or
26 political subdivision therein; or any public school, community college,
27 or The University of North Carolina.

28 (2) 'Employee' means a person who performs services for, and under the
29 control and direction of, or contracts with, an agency or independent
30 contractor for wages or other remuneration.

31 (3) 'Adverse personnel action' means the discharge, suspension, transfer, or
32 demotion of any employee or the withholding of bonuses, the reduction
33 in salary or benefits, or any other adverse action taken against an
34 employee within the terms and conditions of employment by an agency
35 or independent contractor.

36 (4) 'Independent contractor' means a person, other than an agency, engaged
37 in any business and who enters into a contract with an agency.

38 (5) 'Gross mismanagement' means a continuous pattern of managerial
39 abuses, wrongful or arbitrary and capricious actions, or fraudulent or
40 criminal conduct which may have a substantial adverse economic
41 impact.

42 "**§ 143-692. Actions prohibited.**

1 (a) An agency or independent contractor shall not dismiss, discipline, or take any
2 other adverse personnel action against an employee for disclosing information pursuant
3 to the provisions of this section.

4 (b) An agency or independent contractor shall not take any adverse action that
5 affects the rights or interests of a person in retaliation for the person's disclosure of
6 information under this section.

7 (c) The provisions of this section shall not be applicable when an employee or
8 person discloses information known by the employee or person to be false.

9 (d) The information disclosed under this section must include:

10 (1) Any violation or suspected violation of any federal, State, or local law,
11 rule, or regulation committed by an employee or agent of an agency or
12 independent contractor which creates and presents a substantial and
13 specific danger to the public's health, safety, or welfare.

14 (2) Any act or suspected act of gross mismanagement, malfeasance,
15 misfeasance, gross waste of public funds, or gross neglect of duty
16 committed by an employee or agent of an agency or independent
17 contractor.

18 (e) The information disclosed under this section must be disclosed to any agency
19 or federal government entity having the authority to investigate, police, manage, or
20 otherwise remedy the violation or act, including, but not limited to, the Office of the
21 Chief Inspector General, an agency inspector general or the employee designated as
22 agency inspector general under Article 71 of this Chapter, and the whistle-blower's
23 hotline created under this Article. However, for disclosures concerning a local
24 governmental entity, including any regional, county, or municipal entity, special district,
25 community college, or school administrative unit or any political subdivision of any of
26 the foregoing, the information must be disclosed to a chief executive officer or other
27 appropriate local official.

28 (f) This Article protects employees and persons who disclose information on their
29 own initiative in a written and signed complaint; who are requested to participate in an
30 investigation, hearing, or other inquiry conducted by any agency or federal government
31 entity; who refuse to participate in any adverse action prohibited by this section; or who
32 initiate a complaint through the whistle-blower's hotline; or employees who file any
33 written complaint to their supervisory officials or employees who submit a complaint to
34 the Chief Inspector General in the Executive Office of the Governor or to the employee
35 designated as agency inspector general under Article 71 of this Chapter. The provisions
36 of this section may not be used by a person while he or she is under the care, custody, or
37 control of the State Prison System or, after release from the care, custody, or control of
38 the State Prison System, with respect to circumstances that occurred during any period of
39 incarceration. No remedy or other protection under this Article applies to any person who
40 has committed or intentionally participated in committing the violation or suspected
41 violation for which protection under this Article is being sought.

42 **"§ 143-693. Remedies.**

1 (a) Any employee of or applicant for employment with any State agency, who is
2 discharged, disciplined, or subjected to other adverse personnel action, or denied
3 employment, because he or she engaged in an activity protected by this section may file a
4 complaint, which complaint must be made in accordance with the State Personnel Act.
5 The complainant may elect to pursue the administrative remedy available under the State
6 Personnel Act or bring a civil action within 180 days after receipt of the notice.

7 (b) Within 60 days after the action prohibited by this section, any local public
8 employee protected by this section may file a complaint with the appropriate local
9 governmental authority, if that authority has established by ordinance an administrative
10 procedure for handling such complaints. The administrative procedure created by
11 ordinance must provide for the complaint to be heard by a panel of impartial persons
12 appointed by the appropriate local governmental authority. Upon hearing the complaint,
13 the panel must make findings of fact and conclusions of law for a final decision by the
14 local governmental authority. Within 180 days after entry of a final decision by the local
15 governmental authority, the public employee who filed the complaint may bring a civil
16 action in any court of competent jurisdiction. If the local governmental authority has not
17 established an administrative procedure by ordinance or contract, a local public employee
18 may, within 180 days after the action prohibited by this section, bring a civil action in a
19 court of competent jurisdiction. For the purpose of this paragraph, the term 'local
20 governmental authority' includes any regional, county, or municipal entity, special
21 district, community college, or school administrative unit or any political subdivision of
22 any of the foregoing.

23 (c) Any other person protected by this section may, after exhausting all available
24 contractual or administrative remedies, bring a civil action in any court of competent
25 jurisdiction within 180 days after the action prohibited by this section.

26 (d) In any action brought under this section, the relief must include the following:

27 (1) Reinstatement of the employee to the same position held before the
28 adverse action was commenced, or to an equivalent position or
29 reasonable front pay as alternative relief.

30 (2) Reinstatement of the employee's full fringe benefits and seniority rights,
31 as appropriate.

32 (3) Compensation, if appropriate, for lost wages, benefits, or other lost
33 remuneration caused by the adverse action.

34 (4) Payment of reasonable costs, including attorneys fees, to a substantially
35 prevailing employee or to the prevailing employer if the employee filed
36 a frivolous action in bad faith.

37 (5) Issuance of an injunction, if appropriate, by a court of competent
38 jurisdiction.

39 (6) Temporary reinstatement to the employee's former position or to an
40 equivalent position, pending the final outcome on the complaint, if an
41 employee complains of being discharged in retaliation for a protected
42 disclosure and if a court of competent jurisdiction determines that the
43 disclosure was not made in bad faith or for a wrongful purpose or

- 1 occurred after an agency's initiation of a personnel action against the
2 employee which includes documentation of the employee's violation of
3 a disciplinary standard or performance deficiency. This paragraph does
4 not apply to an employee of a municipality.
- 5 (e) It shall be an affirmative defense to any action brought pursuant to this section
6 that the adverse action was predicated upon grounds other than, and would have been
7 taken absent, the employee's or person's exercise of rights protected by this section.
- 8 (f) This Article does not diminish the rights, privileges, or remedies of an
9 employee under any other law or rule or under any employment contract."
- 10 Section 2. This act becomes effective July 1, 1997.