



OFFICE OF THE LEGISLATIVE INSPECTOR GENERAL

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February 26, 2009

Hon. Michael J. Madigan
Speaker of the House of Representatives
300 State House
Springfield, IL 62706

Hon. Christine Radogno
Senate Minority Leader
309 State House
Springfield, IL 62706

Hon. John J. Cullerton
Senate President
327 State House
Springfield, IL 62706

Hon. Tom Cross
House Minority Leader
316 State House
Springfield, IL 62706

Re: *Joint Committee on Government Reform*

Dear Leaders:

Thank you for the opportunity to testify before the Joint Committee on Government Reform on February 24th. You are to be commended for your commitment to ethics in state government.

Enclosed are copies of my written comments and proposed amendatory legislation. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Tom Homer".

Thomas J. Homer
Legislative Inspector General

cc: Honorable James F. Clayborne Jr., Chairman
Legislative Ethics Commission



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MEMORANDUM

TO: Joint Committee on Government Reform

FROM: Thomas J. Homer, Legislative Inspector General

DATE: February 24, 2009

Thank you for the opportunity to appear before your committee. By way of background, I have served as the Legislative Inspector General since my appointment by the General Assembly on July 24, 2004. My professional career spans 30 years of public service as a state's attorney, legislator, appellate court judge and now legislative inspector general. I applaud the efforts of the General Assembly and this committee to foster and promote legislation designed to promote integrity and ethics throughout state government. The topic of today's hearing, "Open Government" is central to that goal.

The General Assembly made significant progress towards ethics reform with the passage of the State Officials and Employees Ethics Act in 2003. This comprehensive legislation was well thought out and established a process for the orderly investigation and adjudication of certain enumerated ethics violations. Prohibited political activity was defined and prohibited. Campaign contributions were banned on State Property. Fundraising in Sangamon County was prohibited on days when the General Assembly is in session. Legislators and legislative employees and members of their families were banned for one year from accepting employment with a company if the State employee participated substantially in a state contract awarding \$25,000 or more to a prospective employer. This is referred to as the Revolving Door Prohibition. The Gift Ban Act prohibitions were added to the Act making it unlawful for legislators and State employees to accept gifts from lobbyists. Ex parte communications made by interested parties to regulatory agencies must be reported. Whistleblower protections are accorded state employees who bring forth evidence of wrongdoing by state officials or other state employees. Persons having a financial

interest in contracts with an entity are prohibited from serving on boards and commissions which oversee the entity. The Act also mandates an ethics training program for all covered employees. While the legislation is far reaching and has provided an important framework for the implementation ethics reforms, more can and should be done.

One of the main criticisms of the Act has been the lack of transparency due to the strict confidentiality provisions. In an attempt to protect the privacy rights of the subject of the complaint, the legislation limits the parties who are entitled to receive information relative to the complaint and investigation.

Section 25-50 of the Act (5 ILCS 530/25-50) provides that if the Inspector General, upon the conclusion of an investigation, determines that reasonable cause exists to believe that a violation has occurred, then the inspector general shall deliver a summary report of the investigation "to the appropriate ultimate jurisdictional authority and to the head of each state agency affected by or involved in the investigation, if appropriate." Section 25-50 (c) of the Act provides that the legislative inspector general "shall keep confidential and shall not disclose information exempted from disclosure under the Freedom of Information Act or by this Act."

While it is understandable that the General Assembly desires to protect the innocent from the public revelation of alleged wrongdoing, the same provisions have served to thwart the public's right-to-know and have served to undermine public confidence in the process.

It has been proposed by the former Chair of the Executive Ethics Commission, Scott Turow, and others that findings by an inspector general that result in significant discipline (at least three-day suspension) be subject to Commission approval, and if approval is granted, to publication. Others, including the former executive inspector general for the office of the governor, have proposed that final founded reports issued by the IG's be subject to publication.

In the spirit of legislative compromise, I propose that the legislature amend the current statute to require that all summary reports issued by an IG together with the report of the ultimate disposition (if applicable) be filed with the Commission. The Commission would then have the discretion to determine which reports would be made available to the public. The legislature could set forth the criteria by which the Commission is to make the decision to publicize a report. The criteria may include such factors as the seriousness of the infraction and the public's right to know. A redaction requirement could be included to minimize the potential deleterious impact on the

accused and innocent individuals. In this way, oversight by the Commission will be provided, the independence of the office of the Inspectors General preserved, and the privacy rights of the accused be balanced against the public's right to know. While this compromise falls short of giving the Commission the right to approve or reject disciplinary dispositions, as Mr. Turow has proposed, it would provide oversight and transparency that is not available under the current statutory scheme. I believe that such legislative amendments to the Act will go a long way toward addressing the various concerns that have been expressed without unduly interfering with the independent role of the Inspectors General or violating the privacy rights of the parties.

In further promotion of transparency, I believe that there is at least one additional matter that should be considered. Under the current statutory scheme, all investigatory files and reports of the Inspectors General, other than quarterly reports, are to be kept confidential, and shall not be divulged except as necessary (i) to the appropriate law enforcement authority, (ii) to the ultimate jurisdiction authority, or (iii) to the appropriate ethics commission. See 5 ILCS 430/20-95 and 5 ILCS 430/25-95. The statute does not specifically authorize an IG to inform a complainant of the status or ultimate disposition of the complaint. It is my understanding that at least one of the IIGs has taken the position that complainants are not entitled to any notification. Although I do not read the current statute as precluding general notification of disposition to the complainant, I believe that the IGs should be specifically authorized to notify complainants of the disposition of their complaints. Unless an IG has the authority to inform a complainant, at least in general terms, of the disposition of the complaint, the matter lacks closure. The failure to communicate with the complainant can lead to unwarranted speculation as to what if any action was taken with respect to the complaint.

Separately, I propose that section 25-5(d) of the State Officials and Employees Ethics Act (the Act) ((5 ILCS 430/25-5(d)) be amended. This section limits jurisdiction of the Legislative Ethics Commission to matters arising under the Act. The Commission was not given jurisdiction over matters arising under the Illinois Governmental Ethics Act (5 ILCS 420/1-101 et seq.). The Governmental Ethics Act, which was enacted in 1967, prohibits certain restricted activities and sets forth a code of conduct for legislators. Although my office has jurisdiction to investigate alleged violations of the Governmental Ethics Act ((see 5 ILCS 430/25-10(c)), the Legislative Ethics Commission is without jurisdiction to hear such matters ((see 5 ILCS 430/25-5(d)). The potential harm that could result from this dichotomy is apparent and foreseeable. When my office receives a complaint alleging that a member of the General Assembly has violated the Illinois

Memorandum to Joint Committee

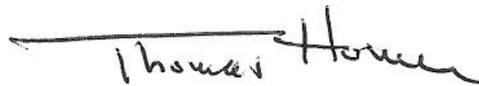
February 24, 2009

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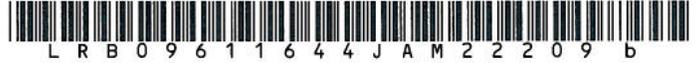
Governmental Ethics Act, for example by accepting an honorarium prohibited by that Act, I am compelled to investigate the complaint. However, where I conclude that the complaint was founded, the Commission is without jurisdiction to consider the matter. This scenario can lead to a lack of enforcement and serves to undermine public confidence in the integrity of the investigatory process. Consequently, I recommend that section 25-5(d) of the Act be amended to extend the jurisdiction of the Legislative Ethics Commission to violations of Article 2 (Restricted Activities) and Article 3, Part 1 (Rules of Conduct for Legislators) of the Illinois Governmental Ethics Act as well as for violations of other rules and laws. I further recommend that section 25-95(b) of the Act be amended to authorize the Legislative Ethics Commission to impose administrative fines for violations of those provisions.

Thank you for your consideration and for providing a forum for the airing of these important issues.

Sincerely,

A handwritten signature in black ink that reads "Thomas Homer". The signature is written in a cursive style and is positioned above a horizontal line that extends to the left.

Thomas J. Homer
Legislative Inspector General



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

INTRODUCED _____, BY

SYNOPSIS AS INTRODUCED:

- 5 ILCS 430/25-5
- 5 ILCS 430/25-15
- 5 ILCS 430/25-50
- 5 ILCS 430/25-90
- 5 ILCS 430/25-95

Amends the State Officials and Employees Ethics Act. Expands the jurisdiction of the Legislative Ethics Commission to include matters arising under the Illinois Governmental Ethics Act and violations of other related laws and rules. Requires the Legislative Inspector General's summary investigation reports to be delivered to the Legislative Ethics Commission. With respect to the confidentiality of the Legislative Inspector General's reports, (i) removes the condition of necessity for the disclosure of reports to law enforcement authorities, ultimate jurisdictional authorities, and the Legislative Ethics Commission and (ii) authorizes the Legislative Ethics Commission to disclose or publish summary investigation reports, based on criteria established by the Commission by rule. Makes other changes. Effective immediately.

LRB096 11644 JAM 22209 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The State Officials and Employees Ethics Act is
5 amended by changing Sections 25-5, 25-15, 25-50, 25-90, and
6 25-95 as follows:

7 (5 ILCS 430/25-5)

8 Sec. 25-5. Legislative Ethics Commission.

9 (a) The Legislative Ethics Commission is created.

10 (b) The Legislative Ethics Commission shall consist of 8
11 commissioners appointed 2 each by the President and Minority
12 Leader of the Senate and the Speaker and Minority Leader of the
13 House of Representatives.

14 The terms of the initial commissioners shall commence upon
15 qualification. Each appointing authority shall designate one
16 appointee who shall serve for a 2-year term running through
17 June 30, 2005. Each appointing authority shall designate one
18 appointee who shall serve for a 4-year term running through
19 June 30, 2007. The initial appointments shall be made within 60
20 days after the effective date of this Act.

21 After the initial terms, commissioners shall serve for
22 4-year terms commencing on July 1 of the year of appointment
23 and running through June 30 of the fourth following year.

1 Commissioners may be reappointed to one or more subsequent
2 terms.

3 Vacancies occurring other than at the end of a term shall
4 be filled by the appointing authority only for the balance of
5 the term of the commissioner whose office is vacant.

6 Terms shall run regardless of whether the position is
7 filled.

8 (c) The appointing authorities shall appoint commissioners
9 who have experience holding governmental office or employment
10 and may appoint commissioners who are members of the General
11 Assembly as well as commissioners from the general public. A
12 commissioner who is a member of the General Assembly must
13 recuse himself or herself from participating in any matter
14 relating to any investigation or proceeding in which he or she
15 is the subject. A person is not eligible to serve as a
16 commissioner if that person (i) has been convicted of a felony
17 or a crime of dishonesty or moral turpitude, (ii) is, or was
18 within the preceding 12 months, engaged in activities that
19 require registration under the Lobbyist Registration Act,
20 (iii) is a relative of the appointing authority, or (iv) is a
21 State officer or employee other than a member of the General
22 Assembly.

23 (d) The Legislative Ethics Commission shall have
24 jurisdiction over members of the General Assembly and all State
25 employees whose ultimate jurisdictional authority is (i) a
26 legislative leader, (ii) the Senate Operations Commission, or

1 (iii) the Joint Committee on Legislative Support Services. The
2 jurisdiction of the Commission is limited to matters arising
3 under this Act or the Illinois Governmental Ethics Act and
4 violations of other related laws and rules.

5 (e) The Legislative Ethics Commission must meet, either in
6 person or by other technological means, monthly or as often as
7 necessary. At the first meeting of the Legislative Ethics
8 Commission, the commissioners shall choose from their number a
9 chairperson and other officers that they deem appropriate. The
10 terms of officers shall be for 2 years commencing July 1 and
11 running through June 30 of the second following year. Meetings
12 shall be held at the call of the chairperson or any 3
13 commissioners. Official action by the Commission shall require
14 the affirmative vote of 5 commissioners, and a quorum shall
15 consist of 5 commissioners. Commissioners shall receive no
16 compensation but may be reimbursed for their reasonable
17 expenses actually incurred in the performance of their duties.

18 (f) No commissioner, other than a commissioner who is a
19 member of the General Assembly, or employee of the Legislative
20 Ethics Commission may during his or her term of appointment or
21 employment:

22 (1) become a candidate for any elective office;

23 (2) hold any other elected or appointed public office
24 except for appointments on governmental advisory boards or
25 study commissions or as otherwise expressly authorized by
26 law;

1 (3) be actively involved in the affairs of any
2 political party or political organization; or

3 (4) actively participate in any campaign for any
4 elective office.

5 (g) An appointing authority may remove a commissioner only
6 for cause.

7 (h) The Legislative Ethics Commission shall appoint an
8 Executive Director subject to the approval of at least 3 of the
9 4 legislative leaders. The compensation of the Executive
10 Director shall be as determined by the Commission or by the
11 Compensation Review Board, whichever amount is higher. The
12 Executive Director of the Legislative Ethics Commission may
13 employ, subject to the approval of at least 3 of the 4
14 legislative leaders, and determine the compensation of staff,
15 as appropriations permit.

16 (Source: P.A. 93-617, eff. 12-9-03; 93-685, eff. 7-8-04.)

17 (5 ILCS 430/25-15)

18 Sec. 25-15. Duties of the Legislative Ethics Commission. In
19 addition to duties otherwise assigned by law, the Legislative
20 Ethics Commission shall have the following duties:

21 (1) To promulgate rules governing the performance of
22 its duties and the exercise of its powers and governing the
23 investigations of the Legislative Inspector General.

24 (2) To conduct administrative hearings and rule on
25 matters brought before the Commission only upon the receipt

1 of pleadings filed by the Legislative Inspector General and
2 not upon its own prerogative, but may appoint special
3 Legislative Inspectors General as provided in Section
4 25-21. Any other allegations of misconduct received by the
5 Commission from a person other than the Legislative
6 Inspector General shall be referred to the Office of the
7 Legislative Inspector General.

8 (3) To prepare and publish manuals and guides and,
9 working with the Office of the Attorney General, oversee
10 training of employees under its jurisdiction that explains
11 their duties.

12 (4) To prepare public information materials to
13 facilitate compliance, implementation, and enforcement of
14 this Act.

15 (5) To submit reports as required by this Act.

16 (6) To the extent authorized by this Act, to make
17 rulings, issue recommendations, and impose administrative
18 fines, if appropriate, in connection with the
19 implementation and interpretation of this Act. The powers
20 and duties of the Commission are limited to matters clearly
21 within the purview of this Act.

22 (7) To issue subpoenas with respect to matters pending
23 before the Commission, subject to the provisions of this
24 Article and in the discretion of the Commission, to compel
25 the attendance of witnesses for purposes of testimony and
26 the production of documents and other items for inspection

1 and copying.

2 (8) To appoint special Legislative Inspectors General
3 as provided in Section 25-21.

4 (9) To determine whether and under what circumstances
5 to disclose or publish reports pursuant to subsection (e)
6 of Section 25-95.

7 (Source: P.A. 93-617, eff. 12-9-03.)

8 (5 ILCS 430/25-50)

9 Sec. 25-50. Investigation reports; complaint procedure.

10 (a) If the Legislative Inspector General, upon the
11 conclusion of an investigation, determines that reasonable
12 cause exists to believe that a violation has occurred, then the
13 Legislative Inspector General shall issue a summary report of
14 the investigation. The report shall be delivered to the
15 appropriate ultimate jurisdictional authority, ~~and~~ to the head
16 of each State agency affected by or involved in the
17 investigation, if appropriate, and to the Legislative Ethics
18 Commission.

19 (b) The summary report of the investigation shall include
20 the following:

21 (1) A description of any allegations or other
22 information received by the Legislative Inspector General
23 pertinent to the investigation.

24 (2) A description of any alleged misconduct discovered
25 in the course of the investigation.

1 (3) Recommendations for any corrective or disciplinary
2 action to be taken in response to any alleged misconduct
3 described in the report, including but not limited to
4 discharge.

5 (4) Other information the Legislative Inspector
6 General deems relevant to the investigation or resulting
7 recommendations.

8 (c) Not less than 30 days after delivery of the summary
9 report of an investigation under subsection (a), if the
10 Legislative Inspector General desires to file a petition for
11 leave to file a complaint, the Legislative Inspector General
12 shall notify the Commission and the Attorney General. If the
13 Attorney General determines that reasonable cause exists to
14 believe that a violation has occurred, then the Legislative
15 Inspector General, represented by the Attorney General, may
16 file with the Legislative Ethics Commission a petition for
17 leave to file a complaint. The petition shall set forth the
18 alleged violation and the grounds that exist to support the
19 petition. The petition for leave to file a complaint must be
20 filed with the Commission within 18 months after the most
21 recent act of the alleged violation or of a series of alleged
22 violations except where there is reasonable cause to believe
23 that fraudulent concealment has occurred. To constitute
24 fraudulent concealment sufficient to toll this limitations
25 period, there must be an affirmative act or representation
26 calculated to prevent discovery of the fact that a violation

1 has occurred. If a petition for leave to file a complaint is
2 not filed with the Commission within 6 months after notice by
3 the Inspector General to the Commission and the Attorney
4 General, then the Commission may set a meeting of the
5 Commission at which the Attorney General shall appear and
6 provide a status report to the Commission.

7 (d) A copy of the petition must be served on all
8 respondents named in the complaint and on each respondent's
9 ultimate jurisdictional authority in the same manner as process
10 is served under the Code of Civil Procedure.

11 (e) A respondent may file objections to the petition for
12 leave to file a complaint within 30 days after notice of the
13 petition has been served on the respondent.

14 (f) The Commission shall meet, either in person or by
15 telephone, in a closed session to review the sufficiency of the
16 complaint. If the Commission finds that complaint is
17 sufficient, the Commission shall grant the petition for leave
18 to file the complaint. The Commission shall issue notice to the
19 Legislative Inspector General and all respondents of the
20 Commission's ruling on the sufficiency of the complaint. If the
21 complaint is deemed to sufficiently allege a violation of this
22 Act, then the Commission shall notify the parties and shall
23 include a hearing date scheduled within 4 weeks after the date
24 of the notice, unless all of the parties consent to a later
25 date. If the complaint is deemed not to sufficiently allege a
26 violation, then the Commission shall send by certified mail,

1 return receipt requested, a notice to the parties of the
2 decision to dismiss the complaint.

3 (g) On the scheduled date the Commission shall conduct a
4 closed meeting, either in person or, if the parties consent, by
5 telephone, on the complaint and allow all parties the
6 opportunity to present testimony and evidence. All such
7 proceedings shall be transcribed.

8 (h) Within an appropriate time limit set by rules of the
9 Legislative Ethics Commission, the Commission shall (i)
10 dismiss the complaint or (ii) issue a recommendation of
11 discipline to the respondent and the respondent's ultimate
12 jurisdictional authority or impose an administrative fine upon
13 the respondent, or both.

14 (i) The proceedings on any complaint filed with the
15 Commission shall be conducted pursuant to rules promulgated by
16 the Commission.

17 (j) The Commission may designate hearing officers to
18 conduct proceedings as determined by rule of the Commission.

19 (k) In all proceedings before the Commission, the standard
20 of proof is by a preponderance of the evidence.

21 (l) When the Inspector General concludes that there is
22 insufficient evidence that a violation has occurred, the
23 Inspector General shall close the investigation. At the request
24 of the subject of the investigation, the Inspector General
25 shall provide a written statement to the subject of the
26 investigation and to the Commission of the Inspector General's

1 decision to close the investigation. Closure by the Inspector
2 General does not bar the Inspector General from resuming the
3 investigation if circumstances warrant.

4 (Source: P.A. 93-617, eff. 12-9-03.)

5 (5 ILCS 430/25-90)

6 Sec. 25-90. Confidentiality.

7 (a) The identity of any individual providing information or
8 reporting any possible or alleged misconduct to the Legislative
9 Inspector General or the Legislative Ethics Commission shall be
10 kept confidential and may not be disclosed without the consent
11 of that individual, unless the individual consents to
12 disclosure of his or her name or disclosure of the individual's
13 identity is otherwise required by law. The confidentiality
14 granted by this subsection does not preclude the disclosure of
15 the identity of a person in any capacity other than as the
16 source of an allegation.

17 (b) Subject to the provisions of Section 25-50(c),
18 commissioners, employees, and agents of the Legislative Ethics
19 Commission, the Legislative Inspector General, and employees
20 and agents of the Office of the Legislative Inspector General
21 shall keep confidential and shall not disclose information
22 exempted from disclosure under the Freedom of Information Act
23 or by this Act, except as necessary to inform a complainant of
24 the status of an investigation.

25 (Source: P.A. 93-617, eff. 12-9-03.)

1 (5 ILCS 430/25-95)

2 Sec. 25-95. Exemptions.

3 (a) Documents generated by an ethics officer under this
4 Act, except Section 5-50, are exempt from the provisions of the
5 Freedom of Information Act.

6 (a-5) Requests from ethics officers, members, and State
7 employees to the Office of the Legislative Inspector General, a
8 Special Legislative Inspector General, the Legislative Ethics
9 Commission, an ethics officer, or a person designated by a
10 legislative leader for guidance on matters involving the
11 interpretation or application of this Act or rules promulgated
12 under this Act are exempt from the provisions of the Freedom of
13 Information Act. Guidance provided to an ethics officer,
14 member, or State employee at the request of an ethics officer,
15 member, or State employee by the Office of the Legislative
16 Inspector General, a Special Legislative Inspector General,
17 the Legislative Ethics Commission, an ethics officer, or a
18 person designated by a legislative leader on matters involving
19 the interpretation or application of this Act or rules
20 promulgated under this Act is exempt from the provisions of the
21 Freedom of Information Act.

22 (b) Any allegations and related documents submitted to the
23 Legislative Inspector General and any pleadings and related
24 documents brought before the Legislative Ethics Commission are
25 exempt from the provisions of the Freedom of Information Act so

1 long as the Legislative Ethics Commission does not make a
2 finding of a violation of this Act. If the Legislative Ethics
3 Commission finds that a violation has occurred, the entire
4 record of proceedings before the Commission, the decision and
5 recommendation, and the mandatory report from the agency head
6 or ultimate jurisdictional authority to the Legislative Ethics
7 Commission are not exempt from the provisions of the Freedom of
8 Information Act but information contained therein that is
9 exempt from the Freedom of Information Act must be redacted
10 before disclosure as provided in Section 8 of the Freedom of
11 Information Act.

12 (c) Meetings of the Commission under Sections 25-5 and
13 25-15 of this Act are exempt from the provisions of the Open
14 Meetings Act.

15 (d) Unless otherwise provided in this Act, all
16 investigatory files and reports of the Office of the
17 Legislative Inspector General, other than quarterly reports,
18 are confidential, are exempt from disclosure under the Freedom
19 of Information Act, and shall not be divulged to any person or
20 agency, except ~~as necessary~~ (i) to the appropriate law
21 enforcement authority if the matter is referred pursuant to
22 this Act, (ii) to the ultimate jurisdictional authority, or
23 (iii) to the Legislative Ethics Commission.

24 (e) The Legislative Ethics Commission may disclose or
25 publish a summary report issued by the Legislative Inspector
26 General pursuant to Section 25-50. The Commission's

1 determination whether to disclose or publish shall be based on
2 criteria, established by the Commission by rule, that balance
3 the privacy interest of individual subjects of a report and the
4 informational needs of the public.

5 (Source: P.A. 93-617, eff. 12-9-03; 93-685, eff. 7-8-04.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.