



Sen. Susan Garrett

Filed: 3/2/2010

09600SB3118sam001

LRB096 19776 AJT 38021 a

1 AMENDMENT TO SENATE BILL 3118

2 AMENDMENT NO. _____. Amend Senate Bill 3118 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Toll Highway Act is amended by adding
5 Section 8.5 as follows:

6 (605 ILCS 10/8.5 new)

7 Sec. 8.5. Toll Highway Inspector General.

8 (a) The Governor shall, with the advice and consent of the
9 Senate by three-fifths of the elected members concurring by
10 record vote, appoint a Toll Highway Inspector General for the
11 purpose of detection, deterrence, and prevention of fraud,
12 corruption, and mismanagement in the Authority. The Toll
13 Highway Inspector General shall serve a 5-year term. If, during
14 a recess of the Senate, there is a vacancy in the office of the
15 Toll Highway Inspector General, the appointing authority shall
16 make a temporary appointment until the next meeting of the

1 Senate when the appointing authority shall make a nomination to
2 fill that office. No person rejected for the office of the Toll
3 Highway Inspector General shall, except by the Senate's
4 request, be nominated again for that office at the same session
5 of the Senate or be appointed to that office during a recess of
6 that Senate. The Governor may not appoint a relative, as
7 defined by item (6) of Section 10-15 of the State Officials and
8 Employees Ethics Act, as the Toll Highway Inspector General.
9 The Toll Highway Inspector General may be removed only for
10 cause and may be removed only by the Governor.

11 (b) The Toll Highway Inspector General shall have the
12 following qualifications:

13 (1) has not been convicted of any felony under the laws
14 of this State, another state, or the United States;

15 (2) has earned a baccalaureate degree from an
16 institution of higher education; and

17 (3) has 5 or more years of cumulative service (i) with
18 a federal, state, or local law enforcement agency, at least
19 2 years of which have been in a progressive investigatory
20 capacity; (ii) as a federal, state, or local prosecutor;
21 (iii) as a federal or state judge with a criminal docket;
22 (iv) as a senior manager or executive of a federal, state,
23 or local agency; or (v) representing any combination of (i)
24 through (iv).

25 (c) The term of the initial Toll Highway Inspector General
26 shall commence upon qualification and shall run through June

1 30, 2015. The initial appointments shall be made within 60 days
2 after the effective date of this amendatory Act of the 96th
3 General Assembly. After the initial term, each Toll Highway
4 Inspector General shall serve for 5-year terms commencing on
5 July 1 of the year of appointment and running through June 30
6 of the fifth following year. A Toll Highway Inspector General
7 may be reappointed to one or more subsequent terms. A vacancy
8 occurring other than at the end of a term shall be filled by
9 the Governor only for the balance of the term of the Toll
10 Highway Inspector General whose office is vacant. Terms shall
11 run regardless of whether the position is filled.

12 (d) The Toll Highway Inspector General shall have
13 jurisdiction over the Authority and all board members,
14 officers, and employees of, and vendors, subcontractors and
15 others doing business with the Authority. The jurisdiction of
16 the Toll Highway Inspector General is to investigate
17 allegations of fraud, waste, abuse, mismanagement, misconduct,
18 nonfeasance, misfeasance, or malfeasance. Investigations may
19 be based on complaints from any source, including anonymous
20 sources, and may be self-initiated, without a complaint. An
21 investigation may not be initiated more than five years after
22 the most recent act of the alleged violation or of a series of
23 alleged violations except where there is reasonable cause to
24 believe that fraudulent concealment has occurred. To
25 constitute fraudulent concealment sufficient to toll this
26 limitations period, there must be an affirmative act or

1 representation calculated to prevent discovery of the fact that
2 a violation has occurred. The authority to investigate alleged
3 violations of the State Officials and Employees Ethics Act by
4 officers, employees, vendors, subcontractors, and others doing
5 business with the Authority shall remain with the Office of the
6 Governor's Executive Inspector General. The Toll Highway
7 Inspector General shall refer allegations of misconduct under
8 the State Officials and Employees Ethics Act to the Office of
9 the Governor's Executive Inspector General for investigation.
10 Upon completion of its investigation into such allegations, the
11 Office of the Governor's Executive Inspector General shall
12 report the results to the Toll Highway Inspector General. In
13 instances in which the Toll Highway Inspector General continues
14 to investigate other allegations associated with allegations
15 that have been referred to the Office of the Governor's
16 Executive Inspector General pursuant to this subsection, the
17 Toll Highway Inspector General shall report the results of its
18 investigation to the Office of the Governor's Executive
19 Inspector General.

20 (e)(1) If the Toll Highway Inspector General, upon the
21 conclusion of an investigation, determines that reasonable
22 cause exists to believe that fraud, waste, abuse,
23 mismanagement, misconduct, nonfeasance, misfeasance, or
24 malfeasance has occurred, then the Toll Highway Inspector
25 General shall issue a summary report of the investigation. The
26 report shall be delivered to the appropriate authority pursuant

1 to paragraph (3) of subsection (f) of this Section, which shall
2 have 20 days to respond to the report.

3 (2) The summary report of the investigation shall
4 include the following:

5 (A) a description of any allegations or other
6 information received by the Toll Highway Inspector
7 General pertinent to the investigation.

8 (B) a description of any alleged misconduct
9 discovered in the course of the investigation.

10 (C) recommendations for any corrective or
11 disciplinary action to be taken in response to any
12 alleged misconduct described in the report, including
13 but not limited to discharge.

14 (D) other information the Toll Highway Inspector
15 General deems relevant to the investigation or
16 resulting recommendations.

17 (3) Within 60 days after issuance of a final summary
18 report that resulted in a suspension of at least 3 days or
19 termination of employment, the Toll Highway Inspector
20 General shall make the report available to the public by
21 presenting the report to the Board of the Authority and by
22 posting to the Authority's public website. The Toll Highway
23 Inspector General shall redact information in the summary
24 report that may reveal the identity of witnesses,
25 complainants, or informants or if the Toll Highway
26 Inspector General determines it is appropriate to protect

1 the identity of a person before the report is made public.
2 The Toll Highway Inspector General may also redact any
3 information that he or she believes should not be made
4 public taking into consideration the factors set forth in
5 this subsection and paragraph (1) of subsection (k) of this
6 Section and other factors deemed relevant by the Toll
7 Highway Inspector General to protect the Authority and any
8 investigations by the Toll Highway Inspector General,
9 other inspector general offices or law enforcement
10 agencies. Prior to publication, the Toll Highway Inspector
11 General shall permit the respondents and the Authority to
12 review documents to be made public and offer suggestions
13 for redaction or provide a response that shall be made
14 public with the summary report, provided, however, that the
15 Toll Highway Inspector General shall have the sole and
16 final authority to decide what redactions should be made.
17 The Toll Highway Inspector General may make available to
18 the public any other summary report and any such responses
19 or a redacted version of the report and responses.

20 (4) When the Toll Highway Inspector General concludes
21 that there is insufficient evidence that a violation has
22 occurred, the Toll Highway Inspector General shall close
23 the investigation. The Toll Highway Inspector General
24 shall provide the appropriate authority pursuant to
25 paragraph (3) of subsection (f) of this Section with a
26 written statement of the Toll Highway Inspector General's

1 decision to close the investigation. At the request of the
2 subject of the investigation, the Toll Highway Inspector
3 General shall provide a written statement to the subject of
4 the investigation of the Toll Highway Inspector General's
5 decision to close the investigation. Closure by the Toll
6 Highway Inspector General does not bar the Toll Highway
7 Inspector General from resuming the investigation if
8 circumstances warrant.

9 (f) The Toll Highway Inspector General shall:

10 (1) have access to all information and personnel
11 necessary to perform the duties of the office.

12 (2) have the power to subpoena witnesses and compel the
13 production of books and papers pertinent to an
14 investigation authorized by this Section. A subpoena may be
15 issued under this subparagraph (2) only by the Toll Highway
16 Inspector General and not by members of the Toll Highway
17 Inspector General's staff. Any person subpoenaed by the
18 Toll Highway Inspector General has the same rights, under
19 Illinois law, as a person subpoenaed by a grand jury. The
20 power to subpoena or to compel the production of books and
21 papers, however, shall not extend to the person or
22 documents of a labor organization or its representatives
23 insofar as the person or documents of a labor organization
24 relate to the function of representing an employee subject
25 to investigation under this Section. Subject to a person's
26 privilege against self-incrimination, any person who fails

1 to appear in response to a subpoena, answer any question,
2 or produce any books or papers pertinent to an
3 investigation under this Section, except as otherwise
4 provided in this Section, or who knowingly gives false
5 testimony in relation to an investigation under this
6 Section is guilty of a Class A misdemeanor.

7 (3) submit reports as required by this Section and
8 applicable administrative rules. Final reports and
9 recommendations shall be submitted to the Authority's
10 Executive Director and the Board of Directors for
11 investigations not involving the Board. Final reports and
12 recommendations shall be submitted to the Chair of the
13 Board and to the Governor for investigations of any Board
14 Member other than the Chair of the Board. Final reports and
15 recommendations for investigations of the Chair of the
16 Board shall be submitted to the Governor.

17 (4) assist and coordinate with the ethics officer for
18 the Authority.

19 (5) participate in or conduct, when appropriate,
20 multi-jurisdictional investigations provided the
21 investigation involves the Authority in some way.

22 (6) serve as the Authority's primary liaison with law
23 enforcement, investigatory, and prosecutorial agencies
24 and, in that capacity, the Toll Highway Inspector General
25 may request any information or assistance that may be
26 necessary for carrying out the duties and responsibilities

1 provided by this Section from any local, state, or federal
2 governmental agency or unit thereof.

3 (7) review hiring and employment files of the Authority
4 to ensure compliance with Rutan v. Republican Party of
5 Illinois, 497 U.S. 62 (1990), and with all applicable
6 employment laws.

7 (8) establish a policy that ensures the appropriate
8 handling and correct recording of all investigations
9 conducted by the Office, and ensures that the policy is
10 accessible via the Internet in order that those seeking to
11 report suspected wrongdoing are familiar with the process
12 and that the subjects of those allegations are treated
13 fairly.

14 (9) receive and investigate complaints or information
15 from an employee of the Authority concerning the possible
16 existence of an activity constituting a violation of law,
17 rules or regulations, mismanagement, abuse of authority,
18 or substantial and specific danger to the public health and
19 safety. Any employee of the Authority who knowingly files a
20 false complaint or files a complaint with reckless
21 disregard for the truth or falsity of the facts underlying
22 the complaint may be subject to discipline.

23 (10) review, coordinate, and recommend methods and
24 procedures to increase the integrity of the Authority.

25 (g) Within six months of appointment, the initial Toll
26 Highway Inspector General shall propose rules, in accordance

1 with the provisions of the Illinois Administrative Procedure
2 Act, establishing minimum requirements for initiating,
3 conducting, and completing investigations. The rules must
4 establish criteria for determining, based upon the nature of
5 the allegation, the appropriate method of investigation, which
6 may include, but is not limited to, site visits, telephone
7 contacts, personal interviews, or requests for written
8 responses. The rules must establish the process, contents, and
9 timing for final reports and recommendations by the Toll
10 Highway Inspector General and for a response and any remedial,
11 disciplinary, or both action by an individual or individuals
12 receiving the final reports and recommendations. The rules must
13 also clarify how the Office of the Toll Highway Inspector
14 General shall interact with other local, state, and federal law
15 enforcement authorities and investigations. Such rules shall
16 provide that investigations and inquiries by the Office of the
17 Toll Highway Inspector General must be conducted in compliance
18 with the provisions of any collective bargaining agreement that
19 applies to the affected employees of the Authority and that any
20 recommendation for discipline or other action against any
21 employee by the Office of the Toll Highway Inspector General
22 must comply with the provisions of any applicable collective
23 bargaining agreement.

24 (h) The Office of the Toll Highway Inspector General shall
25 be an independent office of the Authority. Within its annual
26 budget, the Authority shall provide a clearly delineated budget

1 for the Office of the Toll Highway Inspector General. The
2 budget of the Office of the Toll Highway Inspector General
3 shall be adequate to support an independent and effective
4 office. Except with the consent of the Toll Highway Inspector
5 General, the Authority shall not reduce the budget of the
6 Office of the Toll Highway Inspector General by more than 10
7 percent (i) within any year or (ii) over the five-year term of
8 each Toll Highway Inspector General. To the extent allowed by
9 law and the Authority's policies, the Toll Highway Inspector
10 General shall have sole responsibility for organizing the
11 Office of the Toll Highway Inspector General within the budget
12 established by the Toll Highway Board, including the
13 recruitment, supervision, and discipline of the employees of
14 that office. The Toll Highway Inspector General shall report
15 directly to the Board of Directors of the Authority with
16 respect to the prompt and efficient operation of the Office of
17 the Tollway Highway Inspector General.

18 (i) (1) No Toll Highway Inspector General or employee of the
19 Office of the Toll Highway Inspector General may, during his or
20 her term of appointment or employment:

21 (A) become a candidate for any elective office;

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

26 (C) be actively involved in the affairs of any

1 political party or political organization; or

2 (D) advocate for the appointment of another person
3 to an appointed public office or elected office or
4 position or actively participate in any campaign for
5 any elective office. As used in this paragraph (1),
6 "appointed public office" means a position authorized
7 by law that is filled by an appointing authority as
8 provided by law and does not include employment by
9 hiring in the ordinary course of business.

10 (2) No Toll Inspector General or employee of the Office
11 of the Toll Highway Inspector General may, for one year
12 after the termination of his or her appointment or
13 employment:

14 (A) become a candidate for any elective office;

15 (B) hold any elected public office; or

16 (C) hold any appointed State, county, or local
17 judicial office.

18 (3) The requirements of subparagraph (C) of paragraph
19 (2) of this subsection may be waived by the Executive
20 Ethics Commission.

21 (j) All board members, officers and employees of the
22 Authority have a duty to cooperate with the Toll Highway
23 Inspector General and employees of the Office of the Toll
24 Highway Inspector General in any investigation undertaken
25 pursuant to this Section. Failure to cooperate includes, but is
26 not limited to, intentional omissions and knowing false

1 statements. Failure to cooperate with an investigation
2 pursuant to this Section is grounds for disciplinary action,
3 including termination of employment. Nothing in this Section
4 limits or alters a person's existing rights or protections
5 under State or federal law.

6 (k) (1) The identity of any individual providing
7 information or reporting any possible or alleged misconduct to
8 the Toll Highway Inspector General shall be kept confidential
9 and may not be disclosed without the consent of that
10 individual, unless the individual consents to disclosure of his
11 or her name or disclosure of the individual's identity is
12 otherwise required by law. The confidentiality granted by this
13 subsection does not preclude the disclosure of the identity of
14 a person in any capacity other than as the source of an
15 allegation.

16 (2) Subject to the provisions of subsection (e) of this
17 Section, the Toll Highway Inspector General, and employees
18 and agents of the Office of the Toll Highway Inspector
19 General, shall keep confidential and shall not disclose
20 information exempted from disclosure under the Freedom of
21 Information Act or by this Act.

22 (l) If the Toll Highway Inspector General determines that
23 any alleged misconduct involves any person not subject to the
24 jurisdiction of the Toll Highway Inspector General, the Toll
25 Highway Inspector General shall refer the reported allegations
26 to the appropriate Inspector General, appropriate ethics

1 commission or other appropriate body. If the Toll Highway
2 Inspector General determines that any alleged misconduct may
3 give rise to criminal penalties, the Toll Highway Inspector
4 General may refer the allegations regarding that misconduct to
5 the appropriate law enforcement authority. If an Toll Highway
6 Inspector General determines that any alleged misconduct
7 resulted in the loss of public funds in an amount of \$5,000 or
8 greater, the Toll Highway Inspector General shall refer the
9 allegations regarding that misconduct to the Attorney General
10 and any other appropriate law enforcement authority.

11 (m) The Toll Highway Inspector General shall provide to the
12 Governor, the Board of the Authority, and the General Assembly
13 a summary of reports and investigations made under this Section
14 no later than March 31 and September 30 of each year. The
15 summaries shall detail the final disposition of the Inspector
16 General's recommendations. The summaries shall not contain any
17 confidential or identifying information concerning the
18 subjects of the reports and investigations. The summaries shall
19 also include detailed, recommended administrative actions and
20 matters for consideration by the Governor, the Board of the
21 Authority, and the General Assembly."