



Sen. Susan Garrett

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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 Governor shall make a
16 temporary appointment until the next meeting of the Senate when

1 the Governor shall make a nomination to fill that office. No
2 person rejected for the office of the Toll Highway Inspector
3 General shall, except by the Senate's request, be nominated
4 again for that office at the same session of the Senate or be
5 appointed to that office during a recess of that Senate. The
6 Governor may not appoint a relative, as defined by item (6) of
7 Section 10-15 of the State Officials and Employees Ethics Act,
8 as the Toll Highway Inspector General. The Toll Highway
9 Inspector General may be removed only for cause and may be
10 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, and
13 the results of the investigation shall remain subject to any
14 applicable confidentiality provisions in the State Officials
15 and Employees Ethics Act. Where an investigation into a target
16 or targets is split between allegations of misconduct under the
17 State Officials and Employees Ethics Act, investigated by the
18 Office of the Governor's Executive Inspector General, and
19 allegations that are not of misconduct under the State
20 Officials and Employees Ethics Act, investigated by the Toll
21 Highway Inspector General, the Toll Highway Inspector General
22 shall take reasonable steps, including continued consultation
23 with the Office of the Governor's Executive Inspector General,
24 to ensure that its investigation will not interfere with or
25 disrupt any investigation by the Office of the Governor's
26 Executive Inspector General or law enforcement authorities. In

1 instances in which the Toll Highway Inspector General continues
2 to investigate other allegations associated with allegations
3 that have been referred to the Office of the Governor's
4 Executive Inspector General pursuant to this subsection, the
5 Toll Highway Inspector General shall report the results of its
6 investigation to the Office of the Governor's Executive
7 Inspector General.

8 (e) (1) If the Toll Highway Inspector General, upon the
9 conclusion of an investigation, determines that reasonable
10 cause exists to believe that fraud, waste, abuse,
11 mismanagement, misconduct, nonfeasance, misfeasance, or
12 malfeasance has occurred, then the Toll Highway Inspector
13 General shall issue a summary report of the investigation. The
14 report shall be delivered to the appropriate authority pursuant
15 to paragraph (3) of subsection (f) of this Section, which shall
16 have 20 days to respond to the report.

17 (2) The summary report of the investigation shall
18 include the following:

19 (A) a description of any allegations or other
20 information received by the Toll Highway Inspector
21 General pertinent to the investigation.

22 (B) a description of any alleged misconduct
23 discovered in the course of the investigation.

24 (C) recommendations for any corrective or
25 disciplinary action to be taken in response to any
26 alleged misconduct described in the report, including

1 but not limited to discharge.

2 (D) other information the Toll Highway Inspector
3 General deems relevant to the investigation or
4 resulting recommendations.

5 (3) Within 60 days after issuance of a final summary
6 report that resulted in a suspension of at least 3 days or
7 termination of employment, the Toll Highway Inspector
8 General shall make the report available to the public by
9 presenting the report to the Board of the Authority and by
10 posting to the Authority's public website. The Toll Highway
11 Inspector General shall redact information in the summary
12 report that may reveal the identity of witnesses,
13 complainants, or informants or if the Toll Highway
14 Inspector General determines it is appropriate to protect
15 the identity of a person before the report is made public.
16 The Toll Highway Inspector General may also redact any
17 information that he or she believes should not be made
18 public, taking into consideration the factors set forth in
19 this subsection and paragraph (1) of subsection (k) of this
20 Section and other factors deemed relevant by the Toll
21 Highway Inspector General to protect the Authority and any
22 investigations by the Toll Highway Inspector General,
23 other inspector general offices or law enforcement
24 agencies. Prior to publication, the Toll Highway Inspector
25 General shall permit the respondents and the appropriate
26 authority pursuant to paragraph (3) of subsection (f) of

1 this Section to review the report and the documents to be
2 made public and offer suggestions for redaction or provide
3 a response that shall be made public with the summary
4 report, provided, however, that the Toll Highway Inspector
5 General shall have the sole and final authority to decide
6 what redactions should be made. The Toll Highway Inspector
7 General may make available to the public any other summary
8 report and any such responses or a redacted version of the
9 report and responses.

10 (4) When the Toll Highway Inspector General concludes
11 that there is insufficient evidence that a violation has
12 occurred, the Toll Highway Inspector General shall close
13 the investigation. The Toll Highway Inspector General
14 shall provide the appropriate authority pursuant to
15 paragraph (3) of subsection (f) of this Section with a
16 written statement of the Toll Highway Inspector General's
17 decision to close the investigation. At the request of the
18 subject of the investigation, the Toll Highway Inspector
19 General shall provide a written statement to the subject of
20 the investigation of the Toll Highway Inspector General's
21 decision to close the investigation. Closure by the Toll
22 Highway Inspector General does not bar the Toll Highway
23 Inspector General from resuming the investigation if
24 circumstances warrant.

25 (f) The Toll Highway Inspector General shall:

26 (1) have access to all information and personnel

1 necessary to perform the duties of the office.

2 (2) have the power to subpoena witnesses and compel the
3 production of books and papers pertinent to an
4 investigation authorized by this Section. A subpoena may be
5 issued under this subparagraph (2) only by the Toll Highway
6 Inspector General and not by members of the Toll Highway
7 Inspector General's staff. Any person subpoenaed by the
8 Toll Highway Inspector General has the same rights, under
9 Illinois law, as a person subpoenaed by a grand jury. The
10 power to subpoena or to compel the production of books and
11 papers, however, shall not extend to the person or
12 documents of a labor organization or its representatives
13 insofar as the person or documents of a labor organization
14 relate to the function of representing an employee subject
15 to investigation under this Section. Subject to a person's
16 privilege against self-incrimination, any person who fails
17 to appear in response to a subpoena, answer any question,
18 or produce any books or papers pertinent to an
19 investigation under this Section, except as otherwise
20 provided in this Section, or who knowingly gives false
21 testimony in relation to an investigation under this
22 Section is guilty of a Class A misdemeanor.

23 (3) submit reports as required by this Section and
24 applicable administrative rules. Final reports and
25 recommendations shall be submitted to the Authority's
26 Executive Director and the Board of Directors for

1 investigations not involving the Board. Final reports and
2 recommendations shall be submitted to the Chair of the
3 Board and to the Governor for investigations of any Board
4 Member other than the Chair of the Board. Final reports and
5 recommendations for investigations of the Chair of the
6 Board shall be submitted to the Governor.

7 (4) assist and coordinate with the ethics officer for
8 the Authority.

9 (5) participate in or conduct, when appropriate,
10 multi-jurisdictional investigations provided the
11 investigation involves the Authority in some way,
12 including, but not limited to, joint investigations with
13 the Office of the Governor's Executive Inspector General,
14 or with State, local, or federal law enforcement
15 authorities.

16 (6) serve as the Authority's primary liaison with law
17 enforcement, investigatory, and prosecutorial agencies
18 and, in that capacity, the Toll Highway Inspector General
19 may request any information or assistance that may be
20 necessary for carrying out the duties and responsibilities
21 provided by this Section from any local, state, or federal
22 governmental agency or unit thereof.

23 (7) review hiring and employment files of the Authority
24 to ensure compliance with *Rutan v. Republican Party of*
25 *Illinois*, 497 U.S. 62 (1990), and with all applicable
26 employment laws.

1 (8) establish a policy that ensures the appropriate
2 handling and correct recording of all investigations
3 conducted by the Office, and ensures that the policy is
4 accessible via the Internet in order that those seeking to
5 report suspected wrongdoing are familiar with the process
6 and that the subjects of those allegations are treated
7 fairly.

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

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

19 (g) Within six months of appointment, the initial Toll
20 Highway Inspector General shall propose rules, in accordance
21 with the provisions of the Illinois Administrative Procedure
22 Act, establishing minimum requirements for initiating,
23 conducting, and completing investigations. The rules must
24 establish criteria for determining, based upon the nature of
25 the allegation, the appropriate method of investigation, which
26 may include, but is not limited to, site visits, telephone

1 contacts, personal interviews, or requests for written
2 responses. The rules must establish the process, contents, and
3 timing for final reports and recommendations by the Toll
4 Highway Inspector General and for a response and any remedial,
5 disciplinary, or both action by an individual or individuals
6 receiving the final reports and recommendations. The rules must
7 also clarify how the Office of the Toll Highway Inspector
8 General shall interact with other local, state, and federal law
9 enforcement authorities and investigations. Such rules shall
10 provide that investigations and inquiries by the Office of the
11 Toll Highway Inspector General must be conducted in compliance
12 with the provisions of any collective bargaining agreement that
13 applies to the affected employees of the Authority and that any
14 recommendation for discipline or other action against any
15 employee by the Office of the Toll Highway Inspector General
16 must comply with the provisions of any applicable collective
17 bargaining agreement.

18 (h) The Office of the Toll Highway Inspector General shall
19 be an independent office of the Authority. Within its annual
20 budget, the Authority shall provide a clearly delineated budget
21 for the Office of the Toll Highway Inspector General. The
22 budget of the Office of the Toll Highway Inspector General
23 shall be adequate to support an independent and effective
24 office. Except with the consent of the Toll Highway Inspector
25 General, the Authority shall not reduce the budget of the
26 Office of the Toll Highway Inspector General by more than 10

1 percent (i) within any fiscal year or (ii) over the five-year
2 term of each Toll Highway Inspector General. To the extent
3 allowed by law and the Authority's policies, the Toll Highway
4 Inspector General shall have sole responsibility for
5 organizing the Office of the Toll Highway Inspector General
6 within the budget established by the Toll Highway Board,
7 including the recruitment, supervision, and discipline of the
8 employees of that office. The Toll Highway Inspector General
9 shall report directly to the Board of Directors of the
10 Authority with respect to the prompt and efficient operation of
11 the Office of the Tollway Highway Inspector General.

12 (i) (1) No Toll Highway Inspector General or employee of the
13 Office of the Toll Highway Inspector General may, during his or
14 her term of appointment or employment:

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

16 (B) hold any other elected or appointed public
17 office except for appointments on governmental
18 advisory boards or study commissions or as otherwise
19 expressly authorized by law;

20 (C) be actively involved in the affairs of any
21 political party or political organization; or

22 (D) advocate for the appointment of another person
23 to an appointed public office or elected office or
24 position or actively participate in any campaign for
25 any elective office. As used in this paragraph (1),
26 "appointed public office" means a position authorized

1 by law that is filled by an appointing authority as
2 provided by law and does not include employment by
3 hiring in the ordinary course of business.

4 (2) No Toll Inspector General or employee of the Office
5 of the Toll Highway Inspector General may, for one year
6 after the termination of his or her appointment or
7 employment:

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

9 (B) hold any elected public office; or

10 (C) hold any appointed State, county, or local
11 judicial office.

12 (3) The requirements of subparagraph (C) of paragraph
13 (2) of this subsection may be waived by the Executive
14 Ethics Commission.

15 (j) All board members, officers and employees of the
16 Authority have a duty to cooperate with the Toll Highway
17 Inspector General and employees of the Office of the Toll
18 Highway Inspector General in any investigation undertaken
19 pursuant to this Section. Failure to cooperate includes, but is
20 not limited to, intentional omissions and knowing false
21 statements. Failure to cooperate with an investigation
22 pursuant to this Section is grounds for disciplinary action,
23 including termination of employment. Nothing in this Section
24 limits or alters a person's existing rights or protections
25 under State or federal law.

26 (k) (1) The identity of any individual providing

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

10 (2) Subject to the provisions of subsection (e) of this
11 Section, the Toll Highway Inspector General, and employees
12 and agents of the Office of the Toll Highway Inspector
13 General, shall keep confidential and shall not disclose
14 information exempted from disclosure under the Freedom of
15 Information Act or by this Act.

16 (1) If the Toll Highway Inspector General determines that
17 any alleged misconduct involves any person not subject to the
18 jurisdiction of the Toll Highway Inspector General, the Toll
19 Highway Inspector General shall refer the reported allegations
20 to the appropriate Inspector General, appropriate ethics
21 commission or other appropriate body. If the Toll Highway
22 Inspector General determines that any alleged misconduct may
23 give rise to criminal penalties, the Toll Highway Inspector
24 General may refer the allegations regarding that misconduct to
25 the appropriate law enforcement authority. If an Toll Highway
26 Inspector General determines that any alleged misconduct

1 resulted in the loss of public funds in an amount of \$5,000 or
2 greater, the Toll Highway Inspector General shall refer the
3 allegations regarding that misconduct to the Attorney General
4 and any other appropriate law enforcement authority.

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