

SB3937



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3937

Introduced 5/26/2010, by Sen. Susan Garrett

SYNOPSIS AS INTRODUCED:

70 ILCS 3615/3B.17 new

Amends the Regional Transportation Authority Act. Provides that the Governor shall, with the advice and consent of the Senate by three-fifths of the elected members concurring by record vote, appoint a Commuter Rail Inspector General for a 5-year term for the purpose of detection, deterrence, and prevention of fraud, corruption, and mismanagement in the Commuter Rail Division (METRA). Contains provisions concerning appointment, terms, vacancies, removal, qualifications, jurisdiction, duties, rulemaking authority, budget, and reporting requirements of the Commuter Rail Inspector General.

LRB096 22437 RLJ 41667 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning local government.

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

4 Section 5. The Regional Transportation Authority Act is
5 amended by adding Section 3B.17 as follows:

6 (70 ILCS 3615/3B.17 new)

7 Sec. 3B.17. Commuter Rail 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 Commuter Rail Inspector General for the
11 purpose of detection, deterrence, and prevention of fraud,
12 corruption, and mismanagement in the Commuter Rail Division.
13 The Commuter Rail Inspector General shall serve a 5-year term.
14 If, during a recess of the Senate, there is a vacancy in the
15 Office of the Commuter Rail Inspector General, the Governor
16 shall make a temporary appointment until the next meeting of
17 the Senate when the Governor shall make a nomination to fill
18 that office. No person rejected for the Office of the Commuter
19 Rail Inspector General shall, except by the Senate's request,
20 be nominated again for that office at the same session of the
21 Senate or be appointed to that office during a recess of that
22 Senate. The Governor may not appoint a relative, as defined by
23 item (6) of Section 10-15 of the State Officials and Employees

1 Ethics Act, as the Commuter Rail Inspector General. The
2 Commuter Rail Inspector General may be removed only for cause
3 and may be removed only by the Governor.

4 (b) The Commuter Rail Inspector General shall have the
5 following qualifications:

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

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

10 (3) has 5 or more years of cumulative service (i) with
11 a federal, state, or local law enforcement agency, at least
12 2 years of which have been in a progressive investigatory
13 capacity; (ii) as a federal, state, or local prosecutor;
14 (iii) as a federal or state judge with a criminal docket;
15 (iv) as a senior manager or executive of a federal, state,
16 or local agency; or (v) representing any combination of (i)
17 through (iv).

18 (c) The term of the initial Commuter Rail Inspector General
19 shall commence upon appointment and shall run through June 30,
20 2015. The initial appointment shall be made within 60 days
21 after the effective date of this amendatory Act of the 96th
22 General Assembly. After the initial term, each Commuter Rail
23 Inspector General shall serve for a 5-year term commencing on
24 July 1 of the year of appointment and running through June 30
25 of the fifth following year. A Commuter Rail Inspector General
26 may be reappointed to one or more subsequent terms. A vacancy

1 occurring other than at the end of a term shall be filled by
2 the Governor only for the balance of the term of the Commuter
3 Rail Inspector General whose office is vacant. Terms shall run
4 regardless of whether the position is filled.

5 (d) The Commuter Rail Inspector General shall have
6 jurisdiction over the Commuter Rail Division and all officers
7 and employees of, and vendors, subcontractors, and others doing
8 business with the Commuter Rail Division. The jurisdiction of
9 the Commuter Rail Inspector General is to investigate
10 allegations of fraud, waste, abuse, mismanagement, misconduct,
11 nonfeasance, misfeasance, or malfeasance. Investigations may
12 be based on complaints from any source, including anonymous
13 sources, and may be self-initiated, without a complaint. An
14 investigation may not be initiated more than 5 years after the
15 most recent act of the alleged violation or of a series of
16 alleged violations except where there is reasonable cause to
17 believe that fraudulent concealment has occurred. To
18 constitute fraudulent concealment sufficient to toll this
19 limitations period, there must be an affirmative act or
20 representation calculated to prevent discovery of the fact that
21 a violation has occurred. The authority to investigate alleged
22 violations of the State Officials and Employees Ethics Act by
23 officers, employees, vendors, subcontractors, and others doing
24 business with the Commuter Rail Division shall remain with the
25 Office of the Governor's Executive Inspector General. The
26 Commuter Rail Inspector General shall refer allegations of

1 misconduct under the State Officials and Employees Ethics Act
2 to the Office of the Governor's Executive Inspector General for
3 investigation. Upon completion of its investigation into such
4 allegations, the Office of the Governor's Executive Inspector
5 General shall report the results to the Commuter Rail Inspector
6 General, and the results of the investigation shall remain
7 subject to any applicable confidentiality provisions in the
8 State Officials and Employees Ethics Act. Where an
9 investigation into a target or targets is split between
10 allegations of misconduct under the State Officials and
11 Employees Ethics Act, investigated by the Office of the
12 Governor's Executive Inspector General, and allegations that
13 are not of misconduct under the State Officials and Employees
14 Ethics Act, investigated by the Commuter Rail Inspector
15 General, the Commuter Rail Inspector General shall take
16 reasonable steps, including continued consultation with the
17 Office of the Governor's Executive Inspector General, to ensure
18 that its investigation will not interfere with or disrupt any
19 investigation by the Office of the Governor's Executive
20 Inspector General or law enforcement authorities. In instances
21 in which the Commuter Rail Inspector General continues to
22 investigate other allegations associated with allegations that
23 have been referred to the Office of the Governor's Executive
24 Inspector General pursuant to this subsection, the Commuter
25 Rail Inspector General shall report the results of its
26 investigation to the Office of the Governor's Executive

1 Inspector General.

2 (e)(1) If the Commuter Rail Inspector General, upon the
3 conclusion of an investigation, determines that reasonable
4 cause exists to believe that fraud, waste, abuse,
5 mismanagement, misconduct, nonfeasance, misfeasance, or
6 malfeasance has occurred, then the Commuter Rail Inspector
7 General shall issue a summary report of the investigation. The
8 report shall be delivered to the appropriate authority pursuant
9 to paragraph (3) of subsection (f) of this Section, which shall
10 have 20 days to respond to the report.

11 (2) The summary report of the investigation shall
12 include the following:

13 (A) A description of any allegations or other
14 information received by the Commuter Rail Inspector
15 General pertinent to the investigation.

16 (B) A description of any alleged misconduct
17 discovered in the course of the investigation.

18 (C) Recommendations for any corrective or
19 disciplinary action to be taken in response to any
20 alleged misconduct described in the report, including
21 but not limited to discharge.

22 (D) Other information the Commuter Rail Inspector
23 General deems relevant to the investigation or
24 resulting recommendations.

25 (3) Within 60 days after issuance of a final summary
26 report that resulted in a suspension of at least 3 days or

1 termination of employment, the Commuter Rail Inspector
2 General shall make the report available to the public by
3 presenting the report to the Commuter Rail Board and by
4 posting the report on the Commuter Rail Board's public
5 website. The Commuter Rail Inspector General shall redact
6 information in the summary report that may reveal the
7 identity of witnesses, complainants, or informants or if
8 the Commuter Rail Inspector General determines it is
9 appropriate to protect the identity of a person before the
10 report is made public. The Commuter Rail Inspector General
11 may also redact any information that he or she believes
12 should not be made public, taking into consideration the
13 factors set forth in this subsection and paragraph (1) of
14 subsection (k) of this Section and other factors deemed
15 relevant by the Commuter Rail Inspector General to protect
16 the Commuter Rail Division and any investigations by the
17 Commuter Rail Inspector General, other inspector general
18 offices, or law enforcement agencies. Prior to
19 publication, the Commuter Rail Inspector General shall
20 permit the respondents and the appropriate authority
21 pursuant to paragraph (3) of subsection (f) of this Section
22 to review the report and the documents to be made public
23 and offer suggestions for redaction or provide a response
24 that shall be made public with the summary report,
25 provided, however, that the Commuter Rail Inspector
26 General shall have the sole and final authority to decide

1 what redactions should be made. The Commuter Rail Inspector
2 General may make available to the public any other summary
3 report and any such responses or a redacted version of the
4 report and responses.

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

20 (f) The Commuter Rail Inspector General shall:

21 (1) Have access to all information and personnel
22 necessary to perform the duties of the office.

23 (2) Have the power to subpoena witnesses and compel the
24 production of books and papers pertinent to an
25 investigation authorized by this Section. A subpoena may be
26 issued under this subparagraph (2) only by the Commuter

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

18 (3) Submit reports as required by this Section and
19 applicable administrative rules. Final reports and
20 recommendations shall be submitted to the Commuter Rail
21 Board's Executive Director and the Board of Directors of
22 the Commuter Rail Board for investigations not involving
23 the Commuter Rail Board. Final reports and recommendations
24 shall be submitted to the Chair of the Commuter Rail Board
25 and to the Governor for investigations of any Board member
26 other than the Chair of the Commuter Rail Board. Final

1 reports and recommendations for investigations of the
2 Chair of the Commuter Rail Board shall be submitted to the
3 Governor.

4 (4) Participate in or conduct, when appropriate,
5 multi-jurisdictional investigations provided the
6 investigation involves the Commuter Rail Division in some
7 way, including, but not limited to, joint investigations
8 with the Office of the Governor's Executive Inspector
9 General, or with State, local, or federal law enforcement
10 authorities.

11 (5) Serve as the Commuter Rail Division's primary
12 liaison with law enforcement, investigatory, and
13 prosecutorial agencies and, in that capacity, the Commuter
14 Rail Inspector General may request any information or
15 assistance that may be necessary for carrying out the
16 duties and responsibilities provided by this Section from
17 any local, state, or federal governmental agency or unit
18 thereof.

19 (6) Review hiring and employment files of the Commuter
20 Rail Division to ensure compliance with Rutan v. Republican
21 Party of Illinois, 497 U.S. 62 (1990), and with all
22 applicable employment laws.

23 (7) Establish a policy that ensures the appropriate
24 handling and correct recording of all investigations
25 conducted by the Office, and ensures that the policy is
26 accessible via the Internet in order that those seeking to

1 report suspected wrongdoing are familiar with the process
2 and that the subjects of those allegations are treated
3 fairly.

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

14 (9) Review, coordinate, and recommend methods and
15 procedures to increase the integrity of the Commuter Rail
16 Division.

17 (g) Within 6 months after appointment, the initial Commuter
18 Rail Inspector General shall propose rules, in accordance with
19 the provisions of the Illinois Administrative Procedure Act,
20 establishing minimum requirements for initiating, conducting,
21 and completing investigations. The rules must establish
22 criteria for determining, based upon the nature of the
23 allegation, the appropriate method of investigation, which may
24 include, but is not limited to, site visits, telephone
25 contacts, personal interviews, or requests for written
26 responses. The rules must establish the process, contents, and

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

16 (h) The Office of the Commuter Rail Inspector General shall
17 be an independent office of the Commuter Rail Division. Within
18 its annual budget, the Commuter Rail Board shall provide a
19 clearly delineated budget for the Office of the Commuter Rail
20 Inspector General. The budget of the Office of the Commuter
21 Rail Inspector General shall be adequate to support an
22 independent and effective office. Except with the consent of
23 the Commuter Rail Inspector General, the Commuter Rail Board
24 shall not reduce the budget of the Office of the Commuter Rail
25 Inspector General by more than 10% (i) within any fiscal year
26 or (ii) over the 5-year term of each Commuter Rail Inspector

1 General. To the extent allowed by law and the Commuter Rail
2 Board's policies, the Commuter Rail Inspector General shall
3 have sole responsibility for organizing the Office of the
4 Commuter Rail Inspector General within the budget established
5 by the Commuter Rail Board, including the recruitment,
6 supervision, and discipline of the employees of that office.
7 The Commuter Rail Inspector General shall report directly to
8 the Board of Directors of the Commuter Rail Board with respect
9 to the prompt and efficient operation of the Office of the
10 Commuter Rail Inspector General.

11 (i) (1) No Commuter Rail Inspector General or employee of
12 the Office of the Commuter Rail Inspector General may, during
13 his or her term of appointment or employment:

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

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

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

21 (D) advocate for the appointment of another person
22 to an appointed public office or elected office or
23 position or actively participate in any campaign for
24 any elective office.

25 As used in this paragraph (1), "appointed public
26 office" means a position authorized by law that is filled

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

4 (2) No Commuter Rail Inspector General or employee of
5 the Office of the Commuter Rail Inspector General may, for
6 one year 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 Commuter Rail Division have a duty to cooperate with the
17 Commuter Rail Inspector General and employees of the Office of
18 the Commuter Rail Inspector General in any investigation
19 undertaken pursuant to this Section. Failure to cooperate
20 includes, but is not limited to, intentional omissions and
21 knowing false statements. Failure to cooperate with an
22 investigation pursuant to this Section is grounds for
23 disciplinary action, including termination of employment.
24 Nothing in this Section limits or alters a person's existing
25 rights or protections under State or federal law.

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

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

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

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

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

5 (m) The Commuter Rail Inspector General shall provide to
6 the Governor, the Commuter Rail Board, 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 Commuter Rail
15 Board, and the General Assembly.

16 (n) Any employee of the Commuter Rail Division subject to
17 investigation or inquiry by the Commuter Rail Inspector General
18 or any agent or representative of the Commuter Rail Inspector
19 General concerning misconduct that is criminal in nature shall
20 have the right to be notified of the right to remain silent
21 during the investigation or inquiry and the right to be
22 represented in the investigation or inquiry by an attorney or a
23 representative of a labor organization that is the exclusive
24 collective bargaining representative of employees of the
25 Commuter Rail Division. Any investigation or inquiry by the
26 Commuter Rail Inspector General or any agent or representative

1 of the Commuter Rail Inspector General must be conducted in
2 accordance with the rights of the employees as set forth in
3 State and federal law and applicable judicial decisions. Any
4 recommendations for discipline or any action taken against any
5 employee by the Commuter Rail Inspector General or any
6 representative or agent of the Commuter Rail Inspector General
7 must comply with the provisions of the collective bargaining
8 agreement that applies to the employee.

9 (o) Nothing in this Section shall diminish the rights,
10 privileges, or remedies of a State employee under any other
11 federal or State law, rule, or regulation or under any
12 collective bargaining agreement.