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FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

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Via Electronic and United States Mail

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John J. Cullerton
Senate President
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Springfield, IL 62706

Michael J. Madigan
Speaker of the House of Representatives
300 Capitol Building
Springfield, IL 62706

Christine Radogno
Senate Minority Leader
309G Capitol Building
Springfield, IL 62706

Jim Durkin
House Minority Leader
316 Capitol Building
Springfield, IL 62706

Dear Legislative Leaders:

The Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) is pleased to present you with our 2015 legislative agenda.

As you know, in 2003, the Illinois General Assembly enacted the State Officials and Employees Ethics Act (Ethics Act), which, in the words of then-Senator Barack Obama, sought to address "some of the fundamental flaws that we have had in the system up to now." The bill's co-sponsor, Senator Kirk Dillard, called the bill "another step in the right direction in restoring the public's confidence in the way we do business in Illinois government." The Ethics Act created five Executive Inspectors General (EIGs) tasked with investigating waste, fraud, and abuse, among other things. The Act also created the Executive Ethics Commission (Commission).[1] However, as initially drafted, the Ethics Act severely limited the ability of EIGs to perform their work and kept their investigative results in the dark. Initially, the Ethics Act *did not* allow EIGs to self-initiate investigations, *did not* allow EIGs to investigate anonymous complaints, *did not* specifically require EIGs to review hiring and employment files to ensure compliance with employment laws including the *Rutan* decision, and *did not* contain a mechanism to publicly disclose any *founded* reports (reports of misconduct or wrongdoing).

However, in 2009, amendments to the Ethics Act made several key changes, including:

- allowing EIGs to self-initiate investigations.

[1] The Act also created a parallel structure to oversee members and staff of the Illinois General Assembly.

- allowing EIGs to accept anonymous complaints.
- requiring EIGs to review hiring and employment files.
- requiring certain categories of EIG founded reports to be publicly disclosed.

Speaking in favor of allowing certain founded reports to be publicly disclosed, Speaker Madigan aptly noted that "a lot of this [inspectors general] work has been done in the dark."

As might be expected, the 2009 amendments to the Ethics Act did have a positive impact on the ability of our agency to investigative wrongdoing. For example, just this year, our agency found that IDOT improperly circumvented State hiring rules relating to the "staff assistant" position. *See In Re: Ann Schneider et al*., 11-01567. Our IDOT founded report led to the abolishment of the *Rutan*-exempt "staff assistant" position, the creation of a new board to evaluate IDOT technical positions, and the appointment of a Special Master to further assess IDOT hiring. The IDOT report is an example of an investigation which we "self-initiated," involved "anonymous" complaints and related to a review of hiring and employment files. In other words, *three* of the four 2009 amendments to the Ethics Act were implicated.

However, despite the significance of the IDOT investigation, it may be surprising to learn that the 2009 amendments to the Ethics Act *did not require* the disclosure of our IDOT founded report.[2] Below, we cite *two* additional examples of reports that were not required to be disclosed by the 2009 amendments:

First, a founded report in which we concluded that DCFS improperly monitored millions of dollars in State grant funds. *See In Re: Erwin McEwen, et al.*, 10-01182. This investigation led to a legislative oversight hearing and informed the Grant Accountability and Transparency Act (HB 2747), recently passed by the General Assembly, which strengthens the grant-making process in Illinois.

Second, a founded report in which we concluded that the manner in which DHS oversaw one of the more than 60,000 non-contracted child care providers, resulted in a more than $232,000 overpayment to one provider [Jumpstart] for services it did not provide. *See In Re: Linda Saterfield et al*., 09-01147. This investigation led DHS to implement new reporting oversight, including requiring additional protocols and certifications of child care providers.

We provide the IDOT and above two examples of founded reports as background and context as to why we are seeking certain legislative action. Thus, we make the following suggestions for the upcoming 99th General Assembly:

<u>Increase the public disclosure of significant OEIG founded reports</u>

Under the current version of the Ethics Act, an OEIG founded report is only *required* to be disclosed if the investigation results in an employee termination or suspension of three or more days. This prevents significant investigative reports, such as those identified above, from being *required* to be disclosed.

[2] The IDOT report was disclosed under the Commission's discretionary authority.

Allow the OEIG to communicate with agency heads in matters of public safety

Under the current law, prior to the time a founded report is issued, confidentiality provisions prevent an EIG from disclosing investigatory files and reports to an agency head, even if public safety is at stake. We believe an EIG should be able to disclose safety concerns directly to an agency head if safety is at issue.

Ensure OEIG access to needed information

The Ethics Act makes clear that the OEIG has access to State records and all employees have a duty to cooperate with investigations. Yet the OEIG does not have a mechanism to seek an independent review of objections to our requests for information, even if the objections appear to have no basis in law or fact. We believe the OEIG should have an opportunity to obtain Commission review so that the Commission can be the final arbiter.

Protect the confidentiality of OEIG investigations

OEIG investigatory files are confidential and thus exempt from Freedom of Information Act disclosure. However, we believe the law should make clear that OEIG-generated documents even if in the possession of a State agency or third party, are confidential. Our experience demonstrates a need for this provision because some allegations turn out to be *unfounded.*

In addition to the above legislative changes, we wanted to inform you of one additional matter. The 2009 Ethics Act amendments requiring us to review hiring and employment files coupled with our historical investigations into hiring and employment matters, has led us to conclude that it is necessary to increase our hiring review efforts. Although we appreciate the State's financial condition, we intend to seek a shift of agency appropriations (reduce our request for Public Transportation Funds and increase our request of General Revenue Funds) in order to continue performing these mandated duties. We seek your support in this request.

The OEIG is very proud of its accomplishments and believe we have improved efficiency and ethics within agencies of the Illinois governor. We also believe the legislative proposals we outline above will further improve the functioning of State government and are happy to work on developing and refining these and other agenda proposals. Finally, we look forward to working with your staff and others in the coming months to make our ethics laws stronger in 2015.

Sincerely,

Ricardo Meza
Executive Inspector General