

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 564

FISCAL
NOTE

BY SENATORS IHLENFELD, SMITH, WOELFEL, BALDWIN,
AND LINDSAY

[Introduced March 5, 2021; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §6-7-2a of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new article, designated §6B-4-1, §6B-4-2, §6B-4-3,
 3 §6B-4-4, §6B-4-5, §6B-4-6, §6B-4-7, and §6B-4-8, all relating to the Office of the State
 4 Inspector General; establishing an annual salary; establishing the Office of the State
 5 Inspector General; powers and duties of office; appointment and removal; reappointment;
 6 authority to engage in a criminal investigation; duty to investigative report; submission of
 7 annual report to Legislature; authority to investigate complaints, including authority to
 8 issue subpoenas; authority to apply to courts for orders of contempt; mandate to establish
 9 a code of ethics for the conduct of state business; authority upon evidence of a violation
 10 of the code of ethics; authority upon a finding of malfeasance, nonfeasance,
 11 misappropriation, fraud, or other misconduct in the conduct of state business; authority
 12 upon evidence of criminal activity; procedure for appointment of inspector as a special
 13 prosecutor; confidentiality of disclosed information to Inspector General; confidentiality of
 14 investigative records; and criminal penalty for knowingly and intentionally disclosing
 15 confidential information or records.

Be it enacted by the Legislature of West Virginia:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

1 (a) Each of the following appointive state officers named in this subsection shall be
 2 appointed by the Governor, by and with the advice and consent of the Senate. Each of the
 3 appointive state officers serves at the will and pleasure of the Governor for the term for which the
 4 Governor was elected and until the respective state officers' successors have been appointed
 5 and qualified. Each of the appointive state officers are subject to the existing qualifications for

6 holding each respective office and each has and is hereby granted all of the powers and authority
7 and shall perform all of the functions and services heretofore vested in and performed by virtue
8 of existing law respecting each office.

9 The annual salary of each named appointive state officer is as follows:

10 Commissioner, Division of Highways, \$92,500; Commissioner, Division of Corrections and
11 Rehabilitation, \$90,000; Director, Division of Natural Resources, \$75,000; Superintendent, State
12 Police, \$85,000; Commissioner, Division of Financial Institutions, \$75,000; Commissioner,
13 Division of Culture and History, \$65,000; Commissioner, Alcohol Beverage Control Commission,
14 \$75,000; Commissioner, Division of Motor Vehicles, \$75,000; Director, Human Rights
15 Commission, \$55,000; Commissioner, Division of Labor, \$70,000; Chairperson, Board of Parole,
16 \$55,000; members, Board of Parole, \$50,000; members, Employment Security Review Board,
17 \$17,000; and Commissioner, Workforce West Virginia, \$75,000. Secretaries of the departments
18 shall be paid an annual salary as follows: Health and Human Resources, \$95,000: *Provided*, That
19 effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be
20 paid an annual salary not to exceed \$175,000; Transportation, \$95,000: *Provided, however*, That
21 if the same person is serving as both the Secretary of Transportation and the Commissioner of
22 Highways, he or she shall be paid \$120,000; Revenue, \$95,000; Military Affairs and Public Safety,
23 \$95,000; Administration, \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000;
24 Veterans' Assistance, \$95,000; and Environmental Protection, \$95,000: *Provided further*, That
25 any officer specified in this subsection whose salary is increased by more than \$5,000 as a result
26 of the amendment and reenactment of this section during the 2011 regular session of the
27 Legislature shall be paid the salary increase in increments of \$5,000 per fiscal year beginning
28 July 1, 2011, up to the maximum salary provided in this subsection.

29 (b) Each of the state officers named in this subsection shall continue to be appointed in
30 the manner prescribed in this code and shall be paid an annual salary as follows:

31 Director, Board of Risk and Insurance Management, \$80,000; Director, Division of

32 Rehabilitation Services, \$70,000; Director, Division of Personnel, \$70,000; Executive Director,
33 Educational Broadcasting Authority, \$75,000; Secretary, Library Commission, \$72,000; Director,
34 Geological and Economic Survey, \$75,000; Executive Director, Prosecuting Attorneys Institute,
35 \$80,000; Executive Director, Public Defender Services, \$70,000; Commissioner, Bureau of
36 Senior Services, \$75,000; Executive Director, Women's Commission, \$45,000; Director, Hospital
37 Finance Authority, \$35,000; member, Racing Commission, \$12,000; Chairman, Public Service
38 Commission, \$85,000; members, Public Service Commission, \$85,000; Director, Division of
39 Forestry, \$75,000; and Executive Director of the Health Care Authority, \$80,000.

40 (c) Each of the following appointive state officers named in this subsection shall be
41 appointed by the Governor, by and with the advice and consent of the Senate. Each of the
42 appointive state officers serves at the will and pleasure of the Governor for the term for which the
43 Governor was elected and until the respective state officers' successors have been appointed
44 and qualified. Each of the appointive state officers are subject to the existing qualifications for
45 holding each respective office and each has and is hereby granted all of the powers and authority
46 and shall perform all of the functions and services heretofore vested in and performed by virtue
47 of existing law respecting each office.

48 The annual salary of each named appointive state officer shall be as follows:

49 Commissioner, State Tax Division, \$92,500; Insurance Commissioner, \$92,500; Director,
50 Lottery Commission, \$92,500; Director, Division of Homeland Security and Emergency
51 Management, \$65,000; ~~and~~ Adjutant General, \$125,000; and State Inspector General, \$95,000.

52 (d) No increase in the salary of any appointive state officer pursuant to this section may
53 be paid until and unless the appointive state officer has first filed with the State Auditor and the
54 Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General,
55 certifying that his or her spending unit is in compliance with any general law providing for a salary
56 increase for his or her employees. The Attorney General shall prepare and distribute the form to
57 the affected spending units.

58 (e) The annual salary of each appointive state officer named in this section shall continue
 59 in the amount as set forth in this section from the effective date of the amendments to this section
 60 enacted in 2020, whichever occurs first. After the vacancy or after July 1, 2020, whichever occurs
 61 first, unless otherwise prohibited by law, the annual salary of each appointed state officer named
 62 in this section shall be fixed by the Governor within the current budget allocation. In the event the
 63 annual salary fixed by the Governor for an appointed state officer named in this section exceeds
 64 the amount set forth in this section for the appointed state officer, the amount of the annual salary
 65 for the appointed state officer shall be set forth in a line-item in the budget bill, and payment of an
 66 annual salary to the appointed state officer may not exceed that amount but may be lower than
 67 the salary approved in the budget bill or established in this section. The salary of a newly
 68 appointed state officer named in this section shall be included in the appointment letter for the
 69 position.

**CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES; ETHICS;
 CONFLICTS OF INTEREST; FINANCIAL DISCLOSURE.**

ARTICLE 4. INSPECTOR GENERAL.

§6B-4-1. Definitions.

1 The following definitions apply throughout this article:

2 “Agency” means an authority, a board, a branch, a commission, a committee, a
 3 department, a division, or other instrumentality of the executive, including the administrative,
 4 department of state government. The term includes a body corporate and politic established as
 5 an instrumentality of the State. The term does not include the following:

6 (1) The judicial department of state government.

7 (2) The legislative department of state government.

8 (3) A county, city, town, township, school district, municipal corporation, special taxing
 9 district, or other local instrumentality.

10 “Business relationship” includes the following:

11 (1) Dealings of a person with an agency seeking, obtaining, establishing, maintaining, or
12 implementing:

13 (A) A pecuniary interest in a contract or purchase with the agency; or

14 (B) A license or permit requiring the exercise of judgment or discretion by the agency.

15 (2) The relationship a lobbyist has with an agency.

16 “Employee” means an individual who is employed by an agency on a full-time, a part-time,
17 a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts
18 with an agency for personal services.

19 “Ethics Commission” means the state Ethics Commission created by §6B-2-1 et seq. of
20 this code.

21 “Lobbyist” means an individual who seeks to influence decision making of an agency or is
22 registered as a lobbyist under §6B-3-1 et seq. of this code.

23 “Person” means an individual, corporation, business entity, labor union, association, firm,
24 partnership, limited partnership, committee, club, or other organization or group of persons,
25 irrespective of the denomination given such organization or group.

26 “Special state appointee” means a person who is:

27 (1) Not a state officer or employee; and

28 (2) Elected or appointed to an authority, a board, a commission, a committee, a council, a
29 task force, or other body designated by any name that:

30 (A) Is authorized by statute or executive order; and

31 (B) Functions in a policy or an advisory role in the executive (including the administrative)
32 department of state government, including a separate body corporate and politic.

33 “State officer” means any of the following:

34 (1) The Governor.

35 (2) The Secretary of State.

- 36 (3) The State Auditor.
- 37 (4) The State Superintendent of Schools;
- 38 (5) The Treasurer.
- 39 (6) The Attorney General.
- 40 (7) The Commissioner of Agriculture.

§6B-4-2. Inspector General; powers and duties; appointment and removal; and reappointment.

1 (a) There is established the Office of the Inspector General. The Office of the Inspector
 2 General consists of the Inspector General, who is the director of the office, and an additional staff
 3 of deputy inspectors general, investigators, auditors, and clerical employees appointed by the
 4 Inspector General as necessary to carry out the duties of the Inspector General.

5 (b) The Inspector General is responsible for addressing fraud, waste, abuse, and
 6 wrongdoing in state governmental agencies.

7 (c) The Governor shall appoint the Inspector General with the consent of the Senate.

8 (d) The Inspector General:

9 (1) Except as provided in subdivision (2), shall be appointed for a term that expires on the
 10 earlier of the date that:

11 (A) The term of the Governor who appointed the Inspector General expires; or

12 (B) The Governor leaves office;

13 (2) May only be removed from office by the Governor for:

14 (A) Neglect of duty;

15 (B) Misfeasance;

16 (C) Malfeasance; or

17 (D) Nonfeasance; and

18 (3) Must be an attorney licensed to practice law in this state.

19 (e) If the Governor is reelected, the Governor may reappoint the Inspector General for an

20 additional term.

§6B-4-3. Duties; criminal investigation; recommendations; annual report.

1 The Inspector General shall:

2 (1) Initiate, supervise, and coordinate investigations.

3 (2) Recommend policies and carry out other activities designed to deter, detect, and
4 eradicate fraud, waste, abuse, mismanagement, and misconduct in state government.

5 (3) Receive complaints alleging the following:

6 (A) A violation of chapter 6B of this code.

7 (B) A violation of §61-5A-1 et seq. of this code.

8 (C) The conviction of a felony during the officer's present term of office or any willful
9 unlawful behavior by a public officer in the course of his or her performance of the duties of the
10 public office.

11 (D) A violation of a statute or rule relating to the purchase of goods or services by a current
12 or former employee, state officer, special state appointee, lobbyist, or person who has a business
13 relationship with an agency.

14 (4) If the Inspector General has reasonable cause to believe that a crime has occurred or
15 is occurring, report the suspected crime to:

16 (A) The Governor; and

17 (B) Appropriate state or federal law-enforcement agencies and prosecuting authorities
18 having jurisdiction over the matter.

19 (5) Propose rules for legislative approval pursuant to §29A-3-1 et seq. of this code to
20 implement the provisions of this article.

21 (6) Ensure that the following persons are properly trained in the code of ethics.

22 (A) Employees;

23 (B) State officers;

24 (C) Special state appointees; and

25 (D) Persons who have a business relationship with an agency;

26 (7) Provide advice to a state agency on developing, implementing, and enforcing policies
27 and procedures to prevent or reduce the risk of fraudulent or wrongful acts within the agency.

28 (8) Recommend legislation to the Governor and the Legislature to strengthen public
29 integrity laws, including the code of ethics for state officers, employees, special state appointees,
30 and persons who have a business relationship with an agency, including whether additional
31 specific state officers, employees, or special state appointees should be required to file a financial
32 disclosure statement under §6B-2-6 of this code.

33 (9) Annually submit a report to the Legislature detailing the Inspector General’s activities.

34 (10) Prescribe and provide forms for statements required to be filed under this article.

35 (11) Accept and file information that:

36 (A) Is voluntarily supplied; and

37 (B) Exceeds the requirements of this article.

38 (12) Inspect financial disclosure forms.

39 (13) Notify persons who fail to file forms required under §6B-2-1 et seq. of this code or this
40 article.

41 (14) Prepare interpretive and educational materials and programs.

§6B-4-4. Powers; subpoena and contempt; reports; serving as special prosecuting attorney; civil and criminal actions.

1 To carry out the duties described in §6B-4-3 of this code, the Inspector General has the
2 following powers:

3 (1) As part of an investigation, the Inspector General may:

4 (A) Administer oaths;

5 (B) Examine witnesses under oath;

6 (C) Issue subpoenas and subpoenas duces tecum; and

7 (D) Examine the records, reports, audits, reviews, papers, books, recommendations,

8 contracts, correspondence, or any other documents maintained by an agency.

9 (2) The Inspector General may apply to a circuit court for an order holding an individual in
10 contempt of court if the individual refuses to give sworn testimony under a subpoena issued by
11 the Inspector General or otherwise disobeys a subpoena or subpoena duces tecum issued by the
12 Inspector General.

13 (3) The Inspector General shall prepare a report summarizing the results of every
14 investigation. The report is confidential in accordance with §6B-4-8 of this code and is not subject
15 to disclosure pursuant to §29B-1-1 et seq. of this code.

16 (4) If the Attorney General has elected not to file a civil action for the recovery of funds
17 misappropriated, diverted, missing, or unlawfully gained, the Inspector General may file a civil
18 action for the recovery of the funds in accordance with §6B-4-6 of this code.

19 (5) The Inspector General may prosecute a criminal matter as a special prosecuting
20 attorney or special deputy prosecuting attorney in accordance with §6B-4-7 of this code.

§6B-4-5. Code of ethics; use of state property for political purpose; filing ethics complaint.

1 (a) The Inspector General shall propose rules for legislative approval pursuant to §29A-3-
2 1 et seq. of this code, establishing a code of ethics for the conduct of state business. The code of
3 ethics must be consistent with state law.

4 (b) The code of ethics must, except as provided in subsection (c) of this section, prohibit
5 the following:

6 (1) A state officer, an employee, or a special state appointee from using state materials,
7 funds, property, personnel, facilities, or equipment for a political purpose.

8 (2) Adoption of policies or rules that authorize a state officer, an employee, or a special
9 state appointee to use state materials, funds, property, personnel, facilities, or equipment for a
10 political purpose.

11 For purposes of this section, “political purpose” does not include the handling or disposing
12 of unsolicited political communications.

13 (c) A state officer or an individual designated by the state officer may use state materials,
14 funds, property, personnel, facilities, or equipment for the following:

15 (1) To coordinate the state officer's official, personal, and political calendars.

16 (2) To provide transportation and security for:

17 (A) The state officer; and

18 (B) Any employee or special state appointee who accompanies the state officer.

19 (3) Incidental or *de minimus* political communications or activity involving the state officer.

20 (d) If the Inspector General investigates and determines that there is specific and credible
21 evidence that a current or former employee, a current or former state officer, a current or former
22 special state appointee, or a person who has or had a business relationship with an agency has
23 violated the code of ethics, the Inspector General may:

24 (1) File a complaint with the Ethics Commission and represent the state in a public
25 proceeding before the Ethics Commission as prescribed in §6B-2-1 *et seq.* of this code; or

26 (2) File a complaint with the Ethics Commission and negotiate an agreed settlement for
27 approval by the Ethics Commission according to its rules.

§6B-4-6. Misconduct involving state business; report to Attorney General; Inspector
General's authority to bring civil action.

1 (a) This section applies if the Inspector General finds evidence of misfeasance,
2 malfeasance, nonfeasance, misappropriation, fraud, or other misconduct that has resulted in a
3 financial loss to the State or in an unlawful benefit to an individual in the conduct of State business.

4 (b) If the Inspector General finds evidence described in subsection (a) of this section, the
5 Inspector General shall certify a report of the matter to the Attorney General and provide the
6 Attorney General with any relevant documents, transcripts, or written statements. Not later than
7 180 days after receipt of the report from the Inspector General, the Attorney General shall do one
8 of the following:

9 (1) File a civil action (including an action upon a state officer's official bond) to secure for

10 the state the recovery of funds misappropriated, diverted, missing, or unlawfully gained. Upon
11 request of the Attorney General, the Inspector General shall assist the Attorney General in the
12 investigation, preparation, and prosecution of the civil action.

13 (2) Inform the Inspector General that the Attorney General does not intend to file a civil
14 action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained. If the
15 Attorney General elects not to file a civil action, the Attorney General shall return to the Inspector
16 General all documents and files initially provided by the Inspector General.

17 (3) Inform the Inspector General that the Attorney General is diligently investigating the
18 matter and after further investigation may file a civil action for the recovery of funds
19 misappropriated, diverted, missing, or unlawfully gained. However, if more than 365 days have
20 passed since the Inspector General certified the report to the Attorney General, the Attorney
21 General loses the authority to file a civil action for the recovery of funds misappropriated, diverted,
22 missing, or unlawfully gained and shall return to the Inspector General all documents and files
23 initially provided by the Inspector General.

24 (c) The Inspector General may file a civil action for the recovery of funds misappropriated,
25 diverted, missing, or unlawfully gained if the Inspector General has found evidence described in
26 subsection (a) of this section and reported to the Attorney General under subsection (b) of this
27 section and:

28 (1) The Attorney General has elected under subdivision (2), subsection (b) of this section
29 not to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully
30 gained; or

31 (2) Under subdivision (3), subsection (b) of this section more than 365 days have passed
32 since the Inspector General certified the report to the Attorney General under subsection (b) of
33 this section and the Attorney General has not filed a civil action.

34 (d) If the Inspector General has found evidence described in subsection (a) of this section,
35 the Inspector General may institute forfeiture proceedings in a court having jurisdiction in a county

36 where property derived from or realized through the misappropriation, diversion, disappearance,
37 or unlawful gain of state funds may be located, unless a prosecuting attorney has already
38 instituted forfeiture proceedings against that property.

39 (e) The Inspector General may directly institute civil proceedings against a person who
40 has failed to pay civil penalties imposed by the Ethics Commission under §6B-2-4 of this code.

**§6B-4-7. Crimes; Inspector General’s duty to report to prosecuting attorney; Governor’s
recommendation; appointment of special prosecutor by court of appeals judge;
selection; powers and limitations; indictment.**

1 (a) (1) If the Inspector General discovers evidence of criminal activity, the Inspector
2 General shall certify to the appropriate prosecuting attorney the following information:

3 (A) The identity of any person who may be involved in the criminal activity; and

4 (B) The criminal statute that the Inspector General believes has been violated.

5 (2) In addition, the Inspector General shall provide the prosecuting attorney with any
6 relevant documents, transcripts, or written statements. If the prosecuting attorney decides to
7 prosecute the crime described in the information certified to the prosecuting attorney, or any other
8 related crimes, the Inspector General shall cooperate with the prosecuting attorney in the
9 investigation and prosecution of the case. Upon request of the prosecuting attorney, the Inspector
10 General may participate on behalf of the State in any resulting criminal trial.

11 (b) The Inspector General may request that the Governor recommend the Inspector
12 General be appointed as a special prosecuting attorney under subsection (h) of this section so
13 that the Inspector General may prosecute the matter addressed in the certification if:

14 (1) The prosecuting attorney to whom the Inspector General issues a certification under
15 subsection (a) of this section:

16 (A) Is disqualified from investigating or bringing a criminal prosecution in the matter
17 addressed in the certification;

18 (B) Does not file an information or seek an indictment not later than 180 days after the

19 date on which the Inspector General certified the information to the prosecuting attorney; or

20 (C) Refers the case back to the Inspector General; and

21 (2) The Inspector General finds that there may be probable cause to believe that a person
22 identified in a certification under subdivision (1), subsection (a) of this section has violated a
23 criminal statute identified in a certification under subdivision (2), subsection (a) of this section;

24 (c) The Governor may recommend the Inspector General be appointed as a special
25 prosecuting attorney if:

26 (1) One of the conditions set forth in subdivision (1), subsection (b) of this section relating
27 to the prosecuting attorney is met; and

28 (2) The Governor finds that the appointment of the Inspector General as a special
29 prosecuting attorney is in the best interests of justice.

30 (d)(1) If the Governor has recommended the appointment of the Inspector General as a
31 special prosecuting attorney, the Inspector General shall file a notice with the Chief Justice of the
32 Supreme Court of Appeals, stating:

33 (A) That the Governor has recommended that the Inspector General be appointed as a
34 special prosecutor;

35 (B) The name of the county in which the crime that the Inspector General intends to
36 prosecute is alleged to have been committed; and

37 (C) That the Inspector General requests the chief justice to assign a justice of the Supreme
38 Court of Appeals to determine whether the Inspector General should be appointed as a special
39 prosecuting attorney.

40 (2) Upon receipt of the notice, the Chief Justice of the Supreme Court of Appeals shall
41 randomly select a justice of the Supreme Court of Appeals to determine whether the Inspector
42 General should be appointed as a special prosecuting attorney. The Chief Justice shall exclude
43 from the random selection a justice who resided in the county in which the crime is alleged to
44 have been committed at the time the justice was elected or appointed to the Supreme Court of

45 Appeals.

46 (e) The Inspector General shall file a verified petition for appointment as a special
47 prosecuting attorney with the justice of the Supreme Court of Appeals assigned under subsection
48 (d) of this section. In the verified petition, the Inspector General shall set forth why the Inspector
49 General should be appointed as a special prosecutor. The Inspector General may support the
50 verified petition by including relevant documents, transcripts, or written statements in support of
51 the Inspector General's position. The Inspector General shall serve a copy of the verified petition,
52 along with any supporting evidence, on the prosecuting attorney to whom the case was originally
53 certified under subsection (a) of this section.

54 (f) The prosecuting attorney shall file a verified petition in support of or opposition to the
55 Inspector General's verified petition for appointment as a special prosecuting attorney not later
56 than 15 days after receipt of the Inspector General's verified petition for appointment as a special
57 prosecuting attorney.

58 (g) Upon a showing of particularized need, the justice of the Supreme Court of Appeals
59 may order the verified petitions filed by the Inspector General and the prosecuting attorney to be
60 confidential.

61 (h) (1) After considering the verified petitions, the justice of the Supreme Court of Appeals
62 may appoint the Inspector General or a prosecuting attorney, other than the prosecuting attorney
63 to whom the case was certified under this section, as a special prosecuting attorney if the justice
64 finds that:

65 (A) One of the conditions set forth in subdivision (1), subsection (b) of this section is met;
66 and

67 (B) Appointment of a special prosecuting attorney is in the best interests of justice.

68 (2) In making its determination under this subsection, the justice of the Supreme Court of
69 Appeals shall consider only the arguments and evidence contained in the verified petitions.

70 (i) (1) Except as provided in subsection (k) of this section, a special prosecuting attorney

71 appointed under this section has the same powers as the prosecuting attorney of the county.

72 However, the justice of the Supreme Court of Appeals shall:

73 (A) Limit the scope of the special prosecuting attorney's duties as a special prosecuting
74 attorney to include only the investigation or prosecution of a particular case or particular grand
75 jury investigation, including any matter that reasonably results from the investigation, prosecution,
76 or grand jury investigation; and

77 (B) Establish for a time certain the length of the special prosecuting attorney's term.

78 (2) If the special prosecuting attorney's investigation or prosecution acquires a broader
79 scope or requires additional time to complete, the justice of the Supreme Court of Appeals may
80 at any time increase the scope of the special prosecuting attorney's duties or establish a longer
81 term for the special prosecuting attorney.

82 (j) An Inspector General or prosecuting attorney appointed to serve as a special
83 prosecuting attorney may appoint one or more deputies who are licensed to practice law in this
84 state to serve as a special deputy prosecuting attorney. A special deputy prosecuting attorney is
85 subject to the same statutory restrictions and other restrictions imposed on the special
86 prosecuting attorney by the Supreme Court of Appeals, but otherwise has the same powers as a
87 deputy prosecuting attorney.

88 (k) An Inspector General or prosecuting attorney appointed to serve as a special
89 prosecuting attorney under this section may bring a criminal charge only after obtaining an
90 indictment from a grand jury. An Inspector General or prosecuting attorney appointed under this
91 section to serve as a special prosecuting attorney may not bring a criminal charge by filing an
92 information.

93 (l) The Inspector General or a deputy Inspector General who is licensed to practice law in
94 this state may serve as a special deputy prosecuting attorney.

95 (m) If the Supreme Court of Appeals appoints a prosecuting attorney to serve as a special
96 prosecuting attorney under this section, the Inspector General shall reimburse the prosecuting

97 attorney for the reasonable expenses of investigating and prosecuting the case.

§6B-4-8. Confidentiality of informant; exceptions; records and disclosure; penalties.

1 (a) The identity of any individual who discloses in good faith to the Inspector General
2 information alleging a violation of a state or federal statute, rule, regulation, or ordinance is
3 confidential and may not be disclosed to anyone other than the Governor, the staff of the office of
4 the Inspector General, or an authority to whom the investigation is subsequently referred or
5 certified, unless:

6 (1) The Inspector General makes a written determination that it is in the public interest to
7 disclose the individual's identity; or

8 (2) The individual consents in writing to disclosure of the individual's identity.

9 (b) The investigative records of the Inspector General may be kept confidential, in whole
10 or in part.

11 (c) This subsection does not apply to a person who is a party to an action brought by the
12 Inspector General. Information received by the Inspector General is not required to be produced
13 in the course of discovery unless ordered by a court after a showing of:

14 (1) Particularized need; and

15 (2) Proof that the information requested cannot be obtained from any other source.

16 (d) Except as provided in subsection (e) of this section, a person who knowingly or
17 intentionally discloses: (1) Confidential information or records; or (2) the identity of a person
18 whose identity is confidential under subsection (a) of this section, is guilty of a misdemeanor and,
19 upon conviction, shall be fined not more than \$1,000, or confined in jail for not more than six
20 months, or both fined and confined.

21 (e) A person may disclose confidential information or records or the identity of a person
22 whose identity is confidential under subsection (a) of this section if the Governor authorizes the
23 disclosure of this information in the public interest.

NOTE: The purpose of this bill is to create an office of the Inspector General.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.