

Adopted	Rejected
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COMMITTEE REPORT

YES:	7
NO:	0

MR. SPEAKER:

*Your Committee on Judiciary, to which was referred House Bill 1049, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 4-2-7-6, AS ADDED BY P.L.222-2005, SECTION
- 4 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 5 2012]: Sec. 6. (a) This section applies if the inspector general finds
- 6 evidence of misfeasance, malfeasance, nonfeasance, misappropriation,
- 7 fraud, or other misconduct that has resulted in a financial loss to the
- 8 state or in an unlawful benefit to an individual in the conduct of state
- 9 business.
- 10 (b) If the inspector general finds evidence described in subsection
- 11 (a), the inspector general shall certify a report of the matter to the
- 12 attorney general and provide the attorney general with any relevant
- 13 documents, transcripts, or written statements. Not later than one
- 14 hundred eighty (180) days after receipt of the report from the inspector
- 15 general, the attorney general shall do one (1) of the following:
- 16 (1) File a civil action (including an action upon a state officer's

1 official bond) to secure for the state the recovery of funds
2 misappropriated, diverted, missing, or unlawfully gained. Upon
3 request of the attorney general, the inspector general shall assist
4 the attorney general in the investigation, preparation, and
5 prosecution of the civil action.

6 (2) Inform the inspector general that the attorney general does not
7 intend to file a civil action for the recovery of funds
8 misappropriated, diverted, missing, or unlawfully gained. If the
9 attorney general elects not to file a civil action, the attorney
10 general shall return to the inspector general all documents and
11 files initially provided by the inspector general.

12 (3) Inform the inspector general that the attorney general is
13 diligently investigating the matter and after further investigation
14 may file a civil action for the recovery of funds misappropriated,
15 diverted, missing, or unlawfully gained. However, if more than
16 three hundred sixty-five (365) days have passed since the
17 inspector general certified the report to the attorney general, the
18 attorney general loses the authority to file a civil action for the
19 recovery of funds misappropriated, diverted, missing, or
20 unlawfully gained and shall return to the inspector general all
21 documents and files initially provided by the inspector general.

22 (c) If the inspector general has found evidence described in
23 subsection (a) and reported to the attorney general under subsection (b)
24 and:

25 (1) the attorney general has elected under subsection (b)(2) not to
26 file a civil action for the recovery of funds misappropriated,
27 diverted, missing, or unlawfully gained; or

28 (2) under subsection (b)(3) more than three hundred sixty-five
29 (365) days have passed since the inspector general certified the
30 report to the attorney general under subsection (b) and the
31 attorney general has not filed a civil action;

32 the inspector general may file a civil action for the recovery of funds
33 misappropriated, diverted, missing, or unlawfully gained.

34 (d) If the inspector general has found evidence described in
35 subsection (a), the inspector general may institute forfeiture
36 proceedings under IC 34-24-2 in a court having jurisdiction in a county
37 where property derived from or realized through the misappropriation,
38 diversion, disappearance, or unlawful gain of state funds may be

1 located, unless a prosecuting attorney has already instituted forfeiture
2 proceedings against that property.

3 **(e) The inspector general may directly institute civil proceedings**
4 **against persons who have failed to pay civil penalties imposed by**
5 **the ethics commission under IC 4-2-6-12.**

6 SECTION 2. IC 4-6-3-2, AS AMENDED BY P.L.111-2009,
7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2012]: Sec. 2. (a) The attorney general shall have charge of
9 and direct the prosecution of all civil actions that are brought in the
10 name of the state of Indiana or any state agency.

11 (b) In no instance under this section shall the state or a state agency
12 be required to file a bond.

13 (c) This section does not affect the authority of prosecuting
14 attorneys to prosecute civil actions.

15 (d) This section does not affect the authority of the inspector general
16 to prosecute a civil action under IC 4-2-7-6 for the recovery of **either**
17 **or both of the following:**

18 **(1)** Funds misappropriated, diverted, missing, or unlawfully
19 gained.

20 **(2) A civil penalty imposed by the state ethics commission**
21 **under IC 4-2-6-12.**

22 (e) The attorney general may bring an action to collect unpaid
23 registration fees owed by a commercial dog broker or a commercial
24 dog breeder under IC 15-21.

25 SECTION 3. IC 5-11-5-1, AS AMENDED BY P.L.176-2009,
26 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2012]: Sec. 1. (a) Whenever an examination is made under
28 this article, a report of the examination shall be made. The report must
29 include a list of findings and shall be signed and verified by the
30 examiner making the examination. A finding that is critical of an
31 examined entity must be based upon one (1) of the following:

32 (1) Failure of the entity to observe a uniform compliance
33 guideline established under IC 5-11-1-24(a).

34 (2) Failure of the entity to comply with a specific law.

35 A report that includes a finding that is critical of an examined entity
36 must designate the uniform compliance guideline or the specific law
37 upon which the finding is based. The reports shall immediately be filed
38 with the state examiner, and, after inspection of the report, the state

1 examiner shall immediately file one (1) copy with the officer or person
2 examined, one (1) copy with the auditing department of the
3 municipality examined and reported upon, and one (1) copy in an
4 electronic format under IC 5-14-6 of the reports of examination of state
5 agencies, instrumentalities of the state, and federal funds administered
6 by the state with the legislative services agency, as staff to the general
7 assembly. Upon filing, the report becomes a part of the public records
8 of the office of the state examiner, of the office or the person examined,
9 of the auditing department of the municipality examined and reported
10 upon, and of the legislative services agency, as staff to the general
11 assembly. A report is open to public inspection at all reasonable times
12 after it is filed. If an examination discloses malfeasance, misfeasance,
13 or nonfeasance in office or of any officer or employee, a copy of the
14 report, signed and verified, shall be placed by the state examiner with
15 the attorney general **and the inspector general**. The attorney general
16 shall diligently institute and prosecute civil proceedings against the
17 delinquent officer, or upon the officer's official bond, or both, and
18 against any other proper person that will secure to the state or to the
19 proper municipality the recovery of any funds misappropriated,
20 diverted, or unaccounted for.

21 (b) Before an examination report is signed, verified, and filed as
22 required by subsection (a), the officer or the chief executive officer of
23 the state office, municipality, or entity examined must have an
24 opportunity to review the report and to file with the state examiner a
25 written response to that report. If a written response is filed, it becomes
26 a part of the examination report that is signed, verified, and filed as
27 required by subsection (a).

28 (c) Except as required by subsections (b) and (d), it is unlawful for
29 any deputy examiner, field examiner, or private examiner, before an
30 examination report is made public as provided by this section, to make
31 any disclosure of the result of any examination of any public account,
32 except to the state examiner or if directed to give publicity to the
33 examination report by the state examiner or by any court. If an
34 examination report shows or discloses the commission of a crime by
35 any person, it is the duty of the state examiner to transmit and present
36 the examination report to the grand jury of the county in which the
37 crime was committed at its first session after the making of the
38 examination report and at any subsequent sessions that may be

1 required. The state examiner shall furnish to the grand jury all evidence
 2 at the state examiner's command necessary in the investigation and
 3 prosecution of the crime.

4 (d) If, during an examination under this article, a deputy examiner,
 5 field examiner, or private examiner acting as an agent of the state
 6 examiner determines that the following conditions are satisfied, the
 7 examiner shall report the determination to the state examiner:

8 (1) A substantial amount of public funds has been
 9 misappropriated or diverted.

10 (2) The deputy examiner, field examiner, or private examiner
 11 acting as an agent of the state examiner has a reasonable belief
 12 that the malfeasance or misfeasance that resulted in the
 13 misappropriation or diversion of the public funds was committed
 14 by the officer or an employee of the office.

15 (e) After receiving a preliminary report under subsection (d), the
 16 state examiner may provide a copy of the report to the attorney general.
 17 The attorney general may institute and prosecute civil proceedings
 18 against the delinquent officer or employee, or upon the officer's or
 19 employee's official bond, or both, and against any other proper person
 20 that will secure to the state or to the proper municipality the recovery
 21 of any funds misappropriated, diverted, or unaccounted for.

22 (f) In an action under subsection (e), the attorney general may attach
 23 the defendant's property under IC 34-25-2.

24 (g) A preliminary report under subsection (d) is confidential until
 25 the final report under subsection (a) is issued, unless the attorney
 26 general institutes an action under subsection (e) on the basis of the
 27 preliminary report.

28 SECTION 4. IC 5-11-6-1, AS AMENDED BY P.L.176-2009,
 29 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2012]: Sec. 1. (a) The state examiner, personally or through
 31 the deputy examiners, field examiners, or private examiners, upon the
 32 petition of twenty-five (25) interested taxpayers showing that effective
 33 local relief has not and cannot be obtained after due effort, shall make
 34 the inquiries, tests, examinations, and investigations that may be
 35 necessary to determine whether:

36 (1) any public contract has been regularly and lawfully executed
 37 and performed; or

38 (2) any public work, building, or structure has been or is being

1 performed, built, or constructed in accordance with the terms and
2 provisions of the contract, and in compliance with the plans and
3 specifications, if any.

4 Upon a written petition of twenty-five (25) taxpayers, the state
5 examiner may also require all plans, specifications, and estimates to be
6 submitted to the state examiner for corrections and approval before a
7 contract is awarded.

8 (b) The state examiner, deputy examiner, and any field examiner,
9 when engaged in making an inquiry, test, examination, or investigation
10 under subsection (a), is entitled to examine and inspect any public
11 records, documents, data, contracts, plans, and specifications contained
12 or found in any public office or other place pertaining or relating to the
13 public contract or public work, building, or structure. In addition,
14 subpoenas may be issued to witnesses to appear before the examiner in
15 person or to produce books and papers for inspection and examination.
16 The state examiner, deputy, field, and private examiner may administer
17 oaths and examine witnesses under oath either orally or by
18 interrogatories on all matters under examination and investigation.
19 Under order of the state examiner, the examination may be transcribed,
20 with the reasonable expense paid by the municipality in the same
21 manner as the compensation of the field examiner is paid.

22 (c) The state examiner, the deputy examiner, and a field examiner
23 may enforce attendance and answers to questions and interrogatories,
24 as provided by law, with respect to examinations and investigations
25 made by the state examiner, deputy examiner, field examiner, or
26 private examiner of public offices.

27 (d) The state examiner, deputy examiner, any field examiner, and
28 any private examiner, when making an examination or investigation
29 under subsection (a), shall examine, inspect, and test the public works,
30 buildings, or structures in the manner that the examiner sees fit to
31 determine whether it is being performed, built, or constructed
32 according to the contract and plans and specifications.

33 (e) The state examiner shall file a report covering any examination
34 or investigation that discloses:

35 (1) fraud, collusion, misconduct, or negligence in the letting or
36 the execution of any public contract or in the performance of any
37 of the terms and conditions of any public contract; or

38 (2) any failure to comply with the terms or conditions of any

1 public contract in the construction of any public work, building,
2 or structure or to perform, build, or construct it according to the
3 plans and specifications, if any, provided in the contract;
4 that causes loss, injury, waste, or damage to the state, the municipality,
5 taxing or assessment district, other public entity, or to its citizens, if it
6 is enforceable by assessment or taxation.

7 (f) The report must meet the following requirements:

8 (1) The report must be made, signed, and verified in
9 quadruplicate by the examiner making the examination.

10 (2) The report shall be filed promptly with the state examiner.

11 After inspection of the report, the state examiner shall file a copy of the
12 report promptly with the attorney general **and the inspector general**.

13 (g) The attorney general shall diligently institute and prosecute civil
14 proceedings against any or all officers, individuals, and persons in the
15 form and manner that the attorney general determines will secure a
16 proper recovery to the state, municipality, taxing or assessment district,
17 or other public entity injured, defrauded, or damaged by the matters in
18 the report. These prosecutions may be made by the attorney general and
19 the recovery may be had, either upon public official bonds, contractors'
20 bonds, surety or other bonds, or upon individual liability, either upon
21 contract or in tort, as the attorney general determines is wise. No action
22 or recovery in any form or manner, or against any party or parties,
23 precludes further or additional action or recovery in any other form or
24 manner or against another party, either concurrently with or later found
25 necessary, to secure complete recovery and restitution with respect to
26 all matters exhibited, set out, or described in the report. The suits may
27 be brought in the name of the state on the relation of the attorney
28 general for the benefit of the state, or the municipality, taxing or
29 assessment district, or other public entity that may be proper. The
30 actions brought against any defendants may be joined, as to parties,
31 form, and causes of action, in the manner that the attorney general
32 decides.

33 (h) Any report described in this section or a copy duly certified by
34 the state examiner shall be taken and received in any and all courts of
35 this state as prima facie evidence of the facts stated and contained in
36 the reports.

37 (i) If an examination, investigation, or test is made without a petition
38 being first filed and the examination, investigation, or test shows that

1 the terms of the contract are being complied with, then the expense of
 2 the examination, investigation, or test shall be paid by the state upon
 3 vouchers approved by the state examiner from funds available for
 4 contractual service of the state board of accounts. If such a report
 5 shows misfeasance, malfeasance, or nonfeasance in public office or
 6 shows that the terms of the plans and specifications under which a
 7 contract has been awarded are not being complied with, it is unlawful
 8 to make the report public until the report has been certified to the
 9 attorney general.

10 (j) If, during an examination under this article, a deputy examiner,
 11 field examiner, or private examiner acting as an agent of the state
 12 examiner determines that all of the following conditions are satisfied,
 13 the examiner shall report the determination to the state examiner:

14 (1) A substantial amount of public funds has been
 15 misappropriated or diverted.

16 (2) The deputy examiner, field examiner, or private examiner
 17 acting as an agent of the state examiner has a reasonable belief
 18 that the malfeasance or misfeasance that resulted in the
 19 misappropriation or diversion of public funds was committed by
 20 the officer or an employee of the office.

21 (k) After receiving a preliminary report under subsection (j), the
 22 state examiner may provide a copy of the report to the attorney general.
 23 The attorney general may institute and prosecute civil proceedings
 24 against the delinquent officer or employee, or upon the officer's or
 25 employee's official bond, or both, and against any other proper person
 26 that will secure to the state or to the proper municipality the recovery
 27 of any funds misappropriated, diverted, or unaccounted for.

28 (l) In an action under subsection (k), the attorney general may attach
 29 the defendant's property under IC 34-25-2.

30 (m) A preliminary report under subsection (j) is confidential until
 31 the final report under subsection (e) is issued, unless the attorney
 32 general institutes an action under subsection (k) on the basis of the
 33 preliminary report.

34 SECTION 5. IC 5-11-6-3 IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2012]: Sec. 3. If any examination or
 36 investigation made by the state examiner personally or through a
 37 deputy examiner, field examiner, or private examiner under ~~of~~ this
 38 chapter or ~~of~~ **under** any other statute discloses:

- 1 (1) malfeasance, misfeasance, or nonfeasance in office or of any
 2 officer or employee;
 3 (2) that any public money has been:
 4 (A) unlawfully expended, either by having been expended for
 5 a purpose not authorized by law in an amount exceeding that
 6 authorized by law, or by having been paid to a person not
 7 lawfully entitled to receive it; or
 8 (B) obtained by fraud or in any unlawful manner; or
 9 (3) that any money has been wrongfully withheld from the public
 10 treasury;
 11 a duly verified copy of the report shall be submitted by the state
 12 examiner to the attorney general, who shall institute and prosecute civil
 13 proceedings as provided in section 1 of this chapter, **and to the**
 14 **inspector general.**"
 15 Page 4, after line 39, begin a new paragraph and insert:
 16 "SECTION 10. IC 33-35-2-6.5 IS ADDED TO THE INDIANA
 17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2012]: **Sec. 6.5. A city court in a city having**
 19 **a population of more than ten thousand five hundred (10,500) but**
 20 **less than eleven thousand (11,000) has concurrent jurisdiction with**
 21 **the circuit court in civil cases in which the amount in controversy**
 22 **does not exceed three thousand dollars (\$3,000)."**
 23 Renumber all SECTIONS consecutively.
 (Reference is to HB 1049 as introduced.)

and when so amended that said bill do pass.

Representative Foley