



OFFICE OF THE INSPECTOR GENERAL

ILLINOIS STATE TOLL HIGHWAY AUTHORITY
2700 OGDEN AVENUE, DOWNERS GROVE, IL, 60515

SUMMARY ACTIVITY REPORT FOR APRIL - SEPTEMBER 30, 2011

To: The Office of the Governor
The Board of Directors of the Illinois State Toll Highway Authority
The State of Illinois General Assembly

From: James W. Wagner
Inspector General

Date: September 30, 2011

Re: Office of the Inspector General Summary Activity Report for the Period Ending September 30, 2011.

INTRODUCTION

On January 1, 2011, the Office of the Inspector General became effective at the Illinois State Toll Highway Authority. On July 28, 2010, Governor Pat Quinn signed the legislation (605 ILCS 10/8.5) passed by the General Assembly that created the office of the Inspector General for the Illinois State Toll Highway Authority. On October 18, 2010, Governor Quinn announced the appointment of James W. Wagner to the new position and on November 17, 2010 the Senate Executive Appointments Committee and the Illinois General Assembly approved the appointment, to run until June 30, 2015. The legislation, which became Section 8.5 of the Toll Highway Act, (605 ILCS 10/8.5) includes Subsection (m) of Section 8.5 which states:

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

There are no recommended administrative actions or matters for consideration by the Governor, the Board of the Authority, or the General Assembly during this period.

MISSION/JURISDICTION

The statute (605 ILCS 10/8.5) further advised in section (d) that *“the Toll Highway Inspector General shall have jurisdiction over the Authority and all Board members, officers and employees of, and vendors, subcontractors, and others doing business with the Authority. The jurisdiction of the Toll Highway Inspector General is to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance”*.

The statute required in section (f) (3) that: *Final reports and recommendations shall be submitted to the Authority’s Executive Director and the Board of Directors for investigations not involving the Board”*.

INVESTIGATIONS

Previously the Tollway Board had implemented an investigative position entitled General Manager of Investigations and inquiries similar to those authorized in the referenced Act were underway at the time of implementation of the newly created office on January 1, 2011. Those inquiries were continued and some have been completed and some are still under investigation. The office previously operated with a Secretary and one Investigator under the General Manager. The Secretary has been promoted to Administrative Assistant and the Investigator was promoted to Senior Investigator. One additional Investigator/Auditor was hired effective February 1, 2011 and a Deputy Inspector General was added to the staff on April 18, 2011.

INVESTIGATIONS RESULTING IN DISCIPLINE:

The statute (605 ILCS 10/8.5) further required in Section (e) (3) *“Within 60 days after issuance of a final summary report that resulted in a suspension of at least 3 days or termination of employment, the Toll Highway Inspector General shall make the report available to the public by presenting the report to the Board of the Authority and by posting to the Authority’s public website”*. *“The Toll Highway Inspector General shall redact information in the summary report that may reveal the identity of witnesses, complainants, or informants”*.

Pursuant to this direction, this office is reporting the following investigations for the period of April – September 30, 2011:

IG-11-0010

The IG office received a complaint on March 29, 2011 that a Toll Collector had an unusually large amount of Emergency Vehicle (EV) transactions. On March 29, 2011 a request was

submitted to conduct an electronic review of EV transactions. The results of that request were received and reviewed on March 30, 2011 and revealed that the Toll Collector was collecting cash at the same time he was classifying the transaction as an EV. On April 1, 2011 the Toll Collector, a twenty seven year employee, was interviewed and admitted conducting illegitimate EV transactions for at least the last seven years. He admitted stealing \$7,000.00 and agreed to make full restitution. He resigned his position and the case was referred to the Cook County State's Attorney for criminal prosecution. He was charged with felony theft by the State's Attorney and pled guilty to one misdemeanor charge.

IG-11-0005

On 02/10/11 the Employee Benefits Department (EBD) of the Tollway Department of Administration notified this office that an employee had failed to timely notify the EBD of a divorce. Subsequent investigation determined that, as a result of this failure to notify, the Tollway unnecessarily paid insurance claims for the period of January, 2009 through December 2010 in the amount of \$696. 64. On 4/13/11 the employee agreed to reimburse the Tollway for the full amount of benefits that should not have been incurred by the Tollway.

IG-11-0012

On about 5/9/11 this office received information that a Toll Collector had an unusually large number of Emergency Vehicle (EV) transactions. A review of activity for January 2009 through May 9, 2011 showed 780 EV transactions totaling \$811.25. Unusual Occurrence Reports (UOR's) must be completed to explain EV Transactions; however, none were completed by the Toll Collector during that time period. On 5/18/11 the Toll Collector, a nineteen year employee, was interviewed. He denied collecting money from patrons that he had classified as an EV; denied letting patrons pass through without paying while classifying them as an EV; and denied accepting items from patrons in lieu of paying even when confronted with documentary evidence to the contrary. The Toll Collector was placed on Suspension Pending Investigation and has subsequently been dismissed from the Tollway. The Cook County State's Attorney approved felony charges for Official Misconduct and Theft which are still pending.

IG-11-0013

On about 5/2/11 this office received information that a Toll Collector had an unusually large number of Emergency Vehicle (EV) transactions. A review of activity for January 2009 through May 9, 2011 was conducted. The review showed 412 EV transactions totaling \$415.75. On May 13, 2011 the Toll Collector, a ten year employee, was interviewed. She admitted taking money from patrons, keeping it and classifying the transaction as an EV. She also admitted to occasionally giving patrons a free pass and classifying the transaction as an EV. The Toll

Collector resigned from the Tollway and agreed to repay the amount of \$415.75. The Tollway received that amount from her on June 9, 2011. No referral was made to the State's Attorney since the amount in question was below the State felony theft threshold.

IG-11-0014

On about 5/9/11 this office received information that a Toll Collector had an unusually large number of Emergency Vehicle (EV) transactions. A review of activity for January 2009 through May 5, 2011 determined that there had been a total of 773 EV transactions totaling \$805.05. The Toll Collector was observed collecting cash on occasion and giving a free pass to patrons on other occasions and classifying the transactions as Emergency Vehicles. The Toll Collector, an eleven year, part-time employee, was interviewed on May 26, 2011. She admitted taking money from patrons and classifying it as an EV transaction and on other occasions allowing patrons to pass for free and classifying it as an EV transaction. She advised that any legitimate EV transactions were always noted on an Unusual Occurrence Report (UOR) and if there was no UOR the EV transaction was not a legitimate transaction. During the period in question there were eleven UOR's submitted totaling \$15.50. After removing the legitimate transactions the total came to 762 transactions totaling \$789.55. She signed an authorization for the Tollway to withhold that amount to repay the thefts. She refused to resign her position and was placed on Suspension Pending Investigation. The Cook County State's Attorney authorized Felony Theft charges. On July 15, 2011 the Tollway terminated the Collector. Felony charges are still pending.

IG-11-0003

On about August 16, 2011 this office was notified that a Tollway Laborer may have misused his Non-Revenue I-Pass Transponder. A report for the period of February 22, 2010 through October 14, 2010 documented that there were 766 occasions that were not consistent with travel to and from work for a total of \$627.60. On June 23, 2011, this office was advised that the Laborer was placed on Suspension Pending Investigation on March 28, 2011 regarding outside employment work during normal Tollway working hours. Subsequent investigation by this office confirmed the allegations that the employee improperly conducted outside employment during normal work hours and financially benefited from said employment. Further, the employee failed to follow Tollway policy and procedure and used his personal cellular telephone during working hours in furtherance of his secondary employment. He also allowed non-employees of the Tollway onto Tollway property, permitting them to park their vehicles on Tollway property and used a Tollway vehicle to further his personal business. In addition, the total review of the period April 2009 through March 21, 2011 showed misuse of the Tollway Non-Revenue transponder on 1,350 occasions for a total cash rate of \$1,107.70. The employee was terminated by the Tollway effective August 19, 2011.

IG-11-0031

On about June 7, 2011 this office was notified by the Employee Benefits Manager that a Tollway Toll Collector was retiring and it had been determined that the Collector had been carrying her nephew as her son on her health insurance coverage. Subsequent investigation determined that the Tollway insurance plan changed in 2000 and employees were to submit documentation regarding their relationship with dependants, but that the follow up to verify that documentation was not a high priority. As a result the Human Resources Department missed the inappropriate coverage. The employee was interviewed and admitted that the dependant was in fact her nephew who needed care after her sister abandoned the child. The employee assumed care of the child, but did not obtain guardianship until December, 2005. The employee agreed to reimburse the Tollway in the amount of \$6,320.06 in partial repayment for the benefits paid by the Tollway. That payment was made to the Tollway on July 8, 2011.

IG-11-0027

On about August 16, 2011 this office was advised that a Summer Temporary Toll Collector Employee had a series of unexplained shortages. When interviewed on August 16, 2011 the Collector advised she had been working as a temporary seasonal Toll Collector since July 5, 2011. She had no explanation for a shortage totaling \$520.35 for that period of time. The Chief of Administration terminated her employment on August 16, 2011 and on August 18, 2011 the amount of \$520.35 was reimbursed to the Tollway.

ADDITIONAL INVESTIGATIONS RESULTING IN RECOMMENDATIONS:

IG-11-0015

On May 24, 2011 the IG office was notified by the Chief of Administration that a possible violation of *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990) (*Rutan*) may have occurred during the grading of the interviews for the Video Surveillance Supervisor position. Allegedly, one of the *Rutan* certified interviewers received a list of preferred names for the position after the interviews were conducted but before the scoring had been completed. The investigation confirmed the existence of the list but developed no evidence that the intent was to subvert the *Rutan* process. The list was created because the interviewers could not meet to discuss the candidates in person before scoring, which the interviewer thought was part of the normal *Rutan* process based on past practices. While the CMS guidelines do not bar this practice it may create the appearance of impropriety with the potential of creating the appearance that interviewers are deciding who should get the position and then making sure their scores match a pre-determined selection. One interviewer did state that he was influenced by the list of preferred names and his Evaluation Forms scores corroborated that statement.

It was concluded that one interviewer did violate the Tollway Policy and Procedure Manual with regard to his dissemination of a list of top prospects for the position and that another interviewer failed to conduct his own merit based evaluation of the candidates because of the list.

It was recommended that:

- Interviews should be scheduled in a way to allow more timely scoring of individual candidates; ideally immediately after each candidate.
- Interviewers in this matter should be retrained before participation in additional *Rutan* interviews.
- All *Rutan* certified interviewers at the Tollway who have not received any training in five years or more should be retrained as soon as practicable.
- The Tollway should review its practice of having the same Tollway employee conduct the pre-screening of candidates and then participate in the *Rutan* panel interviews for the same position to ensure full compliance with *Rutan* and all relevant Administrative Orders.
- Appropriate discipline was recommended for one employee for the violations of Tollway Policies and Procedures and for the second employee for failing to follow *Rutan* guidelines.

IG-11-0025

On July 5, 2011 the IG Office received information regarding possible hiring irregularities for the Seasonal/Temporary Toll Collectors position. During the investigation the OIG inquired as to the basis for the classification of the Seasonal/Temporary Toll Collector position as exempt from the hiring requirements of *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990) (*Rutan*). The investigation determined that the Tollway staff had been under the mistaken belief that seasonal positions were exempt from the *Rutan* requirements, but in a recent discussion with CMS the fact that both seasonal and temporary positions are covered by *Rutan* was confirmed. However, it was determined that while the positions were improperly classified as *Rutan* exempt, a *Rutan* hiring process was followed for the hiring of the Seasonal Toll Collector positions.

The prior Tollway administrations may have confused *Rutan* exempt and Personnel Code exempt, thinking they were the same. A total of 614 interviews were conducted and the interviewers were *Rutan* certified. The investigation found that the position was misclassified, but no evidence was discovered that the interview process itself was conducted in a manner inconsistent with the *Rutan* requirements.

The following recommendations were listed:

- As previously recommended in IG-11-009, the Human Resources Division (HR) of the Department of Administration should have documented and approved written procedures for all specific functions in the hiring process.
- Some recommendation in IG-11-0015 would also apply; particularly the timely scoring of individual candidates' interviews immediately after each interview is completed.
- The Tollway should document whether or not the *Rutan* process, as outlined in the various Administrative Orders and CMS Hiring Guidelines are being followed and should clearly explain which parts are followed and which are not followed.
- The Tollway should fully document the reasoning for the assertion that the Administrative and Executive Orders as a whole do not apply to the Tollway. The Orders that are being followed should be documented and perhaps included in the Tollway's Policy and Procedure Manual.
- The Department of Administration and the Human Resource Division should have a cohesive operations manual describing the internal process, forms utilized and rules that the staff must follow.

PI-2011-011

On January 21, 2011 the Chief of Staff requested a confirmation regarding property not located for five years or more to determine that policy was followed and items were in fact not accounted for by property control personnel. A review of the process was conducted to determine if all appropriate procedures were followed and on June 8, 2011 a report was

submitted. Property Control has a total of three employees who cover approximately 117 Tollway sites to record property, including manned and unmanned plazas, maintenance sites, central administration and the call center. Property control uses a bar code or an m-number metal tag to keep track of items and lists the information on the Asset Audit Worksheet. The information previously included a “Lost and Stolen” category, but after the 2007 audit the Auditor General recommended that the category be cleared out and the assets either located or removed. There was previously no method to remove items from this category. A five year window was then instituted and anything missing since 2002 would go on a disposal form for each Department Chief to sign off on. The 04/15/11 Asset Audit Worksheet listed a total of 136 assets, valued at \$550,047.23.

New assets are reported in the Tollway SUN system for each department. The Property Control Supervisor assigns assets costing more than \$500 with the next available “M” number and a pre-numbered metallic tag is attached to the item. Some items are affixed with a “bar code” which is recorded in the Asset Win System. “Low value” items have an acquisition cost between \$500 and \$4,999.99. The remaining items over \$5,000.00 are considered a “capitol asset” for financial statement purposes. These assets are accounted for individually and are depreciated in accordance with the Capital Asset policy. This lists the General Accounting Depreciation for Infrastructure; Buildings; Machinery & Equipment; and Fleet. When an asset is disposed of, an Authorization to Ship (or scrap) Materials form is used. The Supervisor or cost center manager disposing of the asset signs the form and indicates the reason for disposal. Assets disposed of normally have little or no remaining value and/or utility. For assets disposed of valued over \$1000, the Department Chief’s signature is required. The completed forms are utilized by Property Control to remove the assets from the inventory and to notify Finance to remove the asset. Finance will “write off” any remaining value, if any, of the asset on the books.

The following recommendations were provided to improve the property control process:

- Additional personnel should be assigned to the Property Control Unit to assist in the annual audit process.
- Any authorization for disposal documents should be maintained by the Property Control Unit for a minimum of five years.
- The Chief Internal Auditor should review the Property Control Unit audit annually and make additional appropriate suggestions and/or findings.
- Department Chiefs should be required to annually account for each item listed as an M-number or bar code asset within their department and provide a written explanation if it is not located.
- Each Department should consider assigning each asset to an employee who would remain responsible for the asset until returned to the Chief if the employee is reassigned or leaves the Tollway.
- If assigned any assets, the employee should annually account for the property assigned and provide a written explanation if the asset is missing.
- Employees should be advised upon employment that any assigned assets remain the property of the Tollway.

IG-11-0032

During the first nine months of 2011 the Office of the Inspector General conducted twelve investigations of Toll Collectors misusing the Emergency Vehicle (EV) transaction button or otherwise misidentifying transactions, resulting in a theft of cash or unauthorized free passage through the plaza. The first case was brought to the attention of this office in June 2010 by the Toll Audit Supervisor regarding a toll collector misclassifying truck tolls. He was then requested to expand his review system wide. The first case regarding the misuse of EV transactions was initiated January 5, 2011. Only those collectors who have been identified as exceeding the State of Illinois felony threshold have been confronted, resulting in ten who have resigned and paid restitution and two others who were subsequently dismissed pending felony charges. It has been determined that there are an additional several dozen who may require further investigation due to significant amounts of questionable transactions. The office therefore initiated an additional investigation into the supervision and management of the collectors to provide possible recommendations for correction of issues.

The interviews of the supervisors and managers determined that direct oversight of activities of collectors is not routinely conducted and review of Unusual Occurrence Reports (UOR's) is not always done by plaza supervisors. Plaza supervisors do not meet with District Managers on a regular basis for updates on issues. The computer information now available to Toll Audit has not been provided in report form to Toll Operations on a regular basis even though Toll Operations did have access to the information.

These and other issues developed during the investigation have been discussed in detail in the investigative report with the following recommendations:

- The Toll Collectors Manual should be updated with all current requirements and each collector should sign off upon receipt of a copy.
- Additional training should be given to each collector regarding the appropriate collection of tolls and the necessity for submission of Unusual Occurrence Reports (UOR').
- Consideration should be given to additional training for Plaza Supervisors in management issues.
- Additional computer surveys by Toll Audit should be done on a regular weekly basis regarding emergency vehicles, unpaid tolls and any other unusual occurrences and the information made available to the District and Plaza Supervisors.
- District Supervisors should have regular monthly meetings with Plaza Supervisors to ensure all plazas are complying with all regulations.

GENERAL SUMMARY OF ACTIVITY:

During the period of April through September, 2011 the Office of the Inspector General opened twenty-four (24) Inspector General (IG) cases and closed twenty (21) IG cases.

There were twelve (12) Investigative Assistance (IA) cases opened and twelve (12) IA's closed.

The office opened twenty (20) Preliminary Inquiry (PI) Investigations and closed eight (8). Two of the PI investigations were converted to IG cases for further investigation.

The IG office received twenty (20) complaints from citizens. Two of these require additional information and four were referred to other Departments for resolution. A total of twenty-six (26) customer complaints were resolved during the period due to carry over from previous lists.

Five (5) redacted investigative reports were posted on the Tollway website for public review during this six month period and additional ones will be posted each month.

The OIG has collected a total of \$25,500.53 in restitution to the Tollway during the past six months.

ADDITIONAL STATUTORY REQUIREMENTS COMPLETED:

The legislation creating the Office of the Inspector General (605 ILCS) 10/8.5), effective January 1, 2011, included the following additional requirement:

(g) Within six months of appointment, the initial Toll Highway Inspector General shall propose rules, in accordance with the provisions of the Illinois Administrative Procedure Act, establishing minimum requirements for initiating, conducting, and completing investigations”.

The proposed rules were submitted and published in the 2011 Illinois Register, Volume 35, Issue 27, dated July 1, 2011, pages 10298-10311 for Section Numbers 3430.10-3430.150.

On September 13, 2011 the Joint Committee on Administrative Rules (JCAR) met in the Michael E. Bilandic Building, Chicago, IL. and approved the proposed rules with no objection. A formal notification of acceptance letter from JCAR was received on September 19, 2011 advising that the rulemaking may now be adopted upon filing with the Office of the Secretary of State.

The rules, as published, are attached.

2011 ILLINOIS REGISTER

RULES
OF GOVERNMENTAL
AGENCIES



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ILLINOIS STATE TOLL HIGHWAY AUTHORITY

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Office of the Inspector General
- 2) Code Citation: 2 Ill. Adm. Code 3430
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
3430.10	New
3430.20	New
3430.30	New
3430.40	New
3430.50	New
3430.60	New
3430.70	New
3430.80	New
3430.90	New
3430.100	New
3430.110	New
3430.120	New
3430.130	New
3430.140	New
3430.150	New
- a) Statutory Authority: 605 ILCS 110/8.5
- b) A Complete Description of the Subjects and Issues Involved: Criteria for initiating, conducting and completing investigations by the Office of Inspector General for the Illinois State Toll Highway Authority (OIG); a description of the OIG's interaction with law enforcement and other agencies including multi-jurisdictional investigations; a description of the OIG's summary reports, written statements, recommendations and responses to the recommendations and the process for making summary reports and responses public.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does rulemaking contain incorporations by reference? No

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

NOTICE OF PROPOSED RULES

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE E: MISCELLANEOUS STATE AGENCIES
CHAPTER LXIV: ILLINOIS STATE TOLL HIGHWAY AUTHORITYPART 3430
OFFICE OF THE INSPECTOR GENERAL

Section	
3430.10	Definitions
3430.20	Jurisdiction
3430.30	Statute of Limitations
3430.40	Collective Bargaining
3430.50	Cooperation
3430.60	Confidentiality Requirements
3430.70	Initiating an Investigation
3430.80	Investigations
3430.90	Interaction with Law Enforcement and Other Agencies
3430.100	Summary Reports
3430.110	Written Statements
3430.120	Recommendations
3430.130	Responses
3430.140	Release of Summary Reports and Responses
3430.150	Bi-Annual Summary of Reports and Investigations

AUTHORITY: Implementing and authorized by Section 8.5 of the Toll Highway Act [605 ILCS 10/8.5].

SOURCE: Adopted at 35 Ill. Reg. _____, effective _____.

Section 3430.10 Definitions

"Act" means the Toll Highway Act [605 ILCS 10].

"Appropriate Authority" means:

The Authority's Executive Director and the Board of Directors for investigations not involving the Board.

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

NOTICE OF PROPOSED RULES

The Chair of the Board and the Governor for investigations of any Board member other than the Chair of the Board.

The Governor for investigations of the Chair of the Board (see 605 ILCS 10/8.5(f)(3)).

"Authority" means the Illinois State Toll Highway Authority as defined by Section 3 of the Act.

"Board of the Authority" or "Board" or "Board members" means the directors of the Authority as defined by Section 3 of the Act.

"Business Day" means any calendar day except Saturday, Sunday or a State holiday, in which event the period runs to the end of the next business day.

"Chair of the Board" means the appointed chairperson of the Board of the Authority as defined by Section 4 of the Act.

"Day" means any calendar day.

"Employee of the Authority" means any person employed full-time, part-time or pursuant to a contract with the Authority.

"Ethics Officer" means the person appointed by the Executive Director of the Authority pursuant to Section 20-23 of the State Officials and Employees Ethics Act [5 ILCS 430/20-23].

"Executive Director" means the Executive Director of the Authority.

"Fraudulent Concealment" means *an affirmative act or representation calculated to prevent discovery of the fact that a violation has occurred* [605 ILCS 10/8.5(d)].

"Inspector General" means the Toll Highway Inspector General appointed under Section 8.5 of the Act.

"Officers of the Authority" means the Executive Staff of the Authority.

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

NOTICE OF PROPOSED RULES

"OEIG" means the Office of the Governor's Executive Inspector General as defined by Section 20-10 of the State Officials and Employees Ethics Act [5 ILCS 430/20-10].

"OIG" means the Office of Inspector General for the Authority and includes the Inspector General, investigators, employees and agents of the Office.

Section 3430.20 Jurisdiction

The OIG shall have jurisdiction over the Authority and all Board members, officers, and employees of, and vendors, subcontractors, and others doing business with, the Authority [605 ILCS 10/8.5(d)]. However, the jurisdiction to investigate alleged violations of the State Officials and Employees Ethics Act [5 ILCS 430] shall remain with the OEIG.

Section 3430.30 Statute of Limitations

An investigation may not be initiated more than five years after the most recent act of the alleged violation or of a series of alleged violations except where there is reasonable cause to believe that fraudulent concealment has occurred [605 ILCS 10/8.5(d)].

Section 3430.40 Collective Bargaining

All preliminary investigations, inquiries, investigations and recommendations of discipline or other action against any employee shall be conducted in compliance with the provisions of the applicable collective bargaining agreement.

Section 3430.50 Cooperation

- a) *All Board members, officers and employees of the Authority have a duty to cooperate with the Toll Highway Inspector General and employees of the Office of the Toll Highway Inspector General in any investigation undertaken pursuant to this Section [605 ILCS 10/8.5(j)].*
- b) *The Inspector General shall have access to all information and personnel necessary to perform the duties of the office [605 ILCS 10/8.5(f)(1)].*
- c) *Any Authority employee who knowingly files a false complaint or files a complaint with reckless disregard for the truthfulness of the underlying facts may be subject to discipline (see 605 ILCS 10/8.5(f)(9)).*

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

NOTICE OF PROPOSED RULES

Section 3430.60 Confidentiality Requirements

- a) *The identity of any individual providing information or reporting any possible or alleged misconduct to the Toll Highway Inspector General shall be kept confidential and may not be disclosed without the consent of that individual [605 ILCS 10/8.5(k)(1)].*
- b) *The confidentiality requirements do not preclude the disclosure of the identity of a person in any capacity other than as the source of an allegation [605 ILCS 10/8.5(k)(1)].*
- c) *The identity of an individual providing information or reporting any possible or alleged misconduct may be disclosed if otherwise required by law (see 605 ILCS 10/8.5(k)(1)).*
- d) *Subject to the provisions of this Part, the OIG shall keep confidential and shall not disclose information exempted from disclosure under the Freedom of Information Act [5 ILCS 140] or by this Act [605 ILCS 10/8.5(k)(2)].*
- e) *The results of OEIG investigations reported to the OIG shall remain subject to any applicable confidentiality provisions in the State Officials and Employees Ethics Act [605 ILCS 10/8.5(d)].*

Section 3430.70 Initiating an Investigation

- a) *Investigations may be based on complaints from any source, including anonymous sources, and may be self-initiated, without a complaint [605 ILCS 10/8.5(d)].*
 - 1) *The OIG shall receive and investigate complaints or information from an employee of the Authority concerning the possible existence of an activity constituting a violation of law, rules or regulations, mismanagement, abuse of authority, or substantial and specific danger to the public health and safety [605 ILCS 10/8.5(f)(9)].*
 - 2) *The OIG also investigates allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance [605 ILCS 10/8(e)(1)].*

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- 3) The OIG shall *review hiring and employment files of the Authority to ensure compliance with *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), and with all applicable employment laws [605 ILCS 10/8.5(f)(7)]*.
- b) Within 30 business days after the receipt of the complaint, allegation, or information, the OIG shall conduct a preliminary investigation to determine if it suggests possible misconduct or violation of any rule, regulation, policy or law.
- c) The minimum requirements for initiating an investigation include, but are not limited to, the following:
 - 1) Jurisdiction.
 - 2) Statute of limitations.
 - 3) Whether the allegations can be independently verified through investigation.
- d) After conducting the preliminary investigation and considering the minimum requirements for initiating an investigation and any other relevant information, the Inspector General shall determine whether the OIG shall:
 - 1) Not conduct an investigation.
 - 2) Open an investigation.
 - 3) Refer the complaint, allegation or information to the appropriate agency, individual or entity.
 - 4) Consolidate the matter with a pending investigation of a similar nature.
 - 5) Suspend opening an investigation pending an external investigation or legal proceeding by law enforcement, prosecutorial entity, or other governmental entity.

Section 3430.80 Investigations

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- a) Once an investigation has been opened, it shall be assigned a unique tracking number and the Inspector General shall assign an investigator to conduct the investigation.
- b) At a minimum, all investigations are required to be conducted autonomously, independent of direction from the Authority, impartially, and in a professional and timely manner. Investigations shall be properly documented to ensure the appropriate handling and correct recording of all investigations.
- c) Possible methods of investigation include, but are not limited to, the following:
 - 1) Site visits.
 - 2) Telephone contacts.
 - 3) Personal interviews.
 - 4) Requests for written responses.
 - 5) Voluntary production of documents and/or information.
 - 6) Seizure and analysis of State, vendor or subcontractor property and documents, including electronic files and databases.
 - 7) Document requests.
 - 8) Subpoenas for records and/or testimony.
- d) Determining which method of investigation is appropriate will vary depending on the nature of the allegation and the balancing of various criteria that include, but are not limited to, the following:
 - 1) Maintaining the confidentiality of the complainant and/or source of the information and other confidentiality requirements.
 - 2) The efficient use of OIG time and resources.
 - 3) The type of information being sought.

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- 4) Whether the allegation is ongoing and/or involves possible danger to the health or safety of employees or the public.
 - 5) Whether the destruction or altering of evidence is possible and/or likely.
 - 6) Availability of potential witnesses and/or information.
- e) Minimum investigatory requirements for completing an investigation:
- 1) An investigation will be sustained if the Inspector General *determines that reasonable cause exists to believe that fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance has occurred* [605 ILCS 10/8.5(e)(1)].
 - 2) An investigation will be closed if the Inspector General *concludes that there is insufficient evidence that a violation has occurred* [605 ILCS 10/8.5(e)(4)]. The Inspector General may close an investigation if, during the course of the investigation, the OIG determines that the events under investigation took place outside of the applicable statute of limitations, that the subjects of the investigation are not under the OIG's jurisdiction, or if the investigation is referred elsewhere.
 - 3) A complete OIG investigation consists of the retrieval of relevant records, review of all relevant documentation, and interviews of all relevant persons.
- f) Subpoena Powers
- 1) *The Inspector General shall have the power to subpoena witnesses and compel the production of books and papers pertinent to an investigation* [605 ILCS 10/8.5(f)(2)].
 - 2) Only the Inspector General may issue a subpoena, not members of the Inspector General's staff. (See 605 ILCS 10/8.5(f)(2).)
 - 3) The Inspector General may not subpoena a *person or documents of a labor organization or its representatives insofar as the person or documents of a labor organization relate to the function of representing an employee subject to investigation under this Section* [605 ILCS 10/8.5(f)(2)].

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- 4) *Subject to a person's privilege against self-incrimination, any person who fails to appear in response to a subpoena, answer any question, or produce any books or papers pertinent to an investigation under this Section, except as otherwise provided in this Section, or who knowingly gives false testimony in relation to an investigation under this Section is guilty of a Class A misdemeanor [605 ILCS 10/8.5(f)(2)].*

Section 3430.90 Interaction with Law Enforcement and Other Agencies

- a) *The OIG shall participate in or conduct, when appropriate, multi-jurisdictional investigations provided the investigation involves the Authority in some way, including, but not limited to, joint investigations with the Office of the Governor's Executive Inspector General, or with State, local, or federal law enforcement authorities [605 ILCS 10/8.5(f)(5)].*
- b) *The Inspector General shall serve as the Authority's primary liaison with law enforcement, investigatory, and prosecutorial agencies [605 ILCS 10/8.5(f)(6)].*
 - 1) *As such, Authority employees shall report all known or suspected criminal acts impacting or resulting from the duties of employees to the Inspector General, who will coordinate with the relevant local, State, or federal law enforcement authorities.*
 - 2) *The Inspector General may render investigative assistance to law enforcement, investigatory and prosecutorial agencies, the OEIG, Authority personnel, or other State agencies. The assistance may include multi-jurisdictional investigations or the Inspector General may pursue an investigation independently.*
 - 3) *As the liaison, the Inspector General may request any information or assistance that may be necessary for carrying out his or her duties and responsibilities from any local, State or federal governmental agency or unit thereof [605 ILCS 10/8.5(f)(6)].*

Section 3430.100 Summary Reports

- a) *If the Toll Highway Inspector General, upon the conclusion of an investigation, determines that reasonable cause exists to believe that fraud, waste, abuse,*

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mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance has occurred, then the Toll Highway Inspector General shall issue a summary report of the investigation [605 ILCS 10/8.5(e)(1)].

- b) *The summary report of the investigation shall include the following:*
- 1) The unique tracking number assigned to the investigation.
 - 2) A summary of the investigative steps taken. The OIG need not disclose any confidential investigatory techniques.
 - 3) *A description of any allegations or other information received by the Toll Highway Inspector General pertinent to the investigation.*
 - 4) *A description of any alleged misconduct discovered in the course of the investigation.*
 - 5) *Recommendations for any corrective or disciplinary action to be taken in response to any alleged misconduct described in the report, including but not limited to discharge.*
 - 6) *Other information the Toll Highway Inspector General deems relevant to the investigation or resulting recommendations [605 ILCS 10/8.5(e)(2)].*

Section 3430.110 Written Statements

The Inspector General shall provide the appropriate authority with a written statement of his or her decision to close an investigation *when the Toll Highway Inspector General concludes that there is insufficient evidence that a violation has occurred [605 ILCS 10/8.5(e)(4)].*

Section 3430.120 Recommendations

- a) After completing an investigation, the Inspector General may make recommendations to the appropriate authority.
- b) Examples of the types of recommendations that may be made include, but are not limited to:

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- 1) Corrective or remedial action against any person or entity that falls under the OIG's jurisdiction.
 - 2) Suspension or debarment of a contractor, vendor, subcontractor or others doing business with the Authority.
 - 3) Discipline up to and including discharge.
 - 4) Methods and procedures to increase the integrity of the Authority and/or prevent fraud, corruption, waste and mismanagement in the Authority.
 - 5) Coordination, reform, review or creation of policies, practices, methods or procedures.
 - 6) Case-specific action.
- c) Recommendations may be made in a summary report or in conjunction with a written statement.

Section 3430.130 Responses

- a) The appropriate authority shall determine, and state in its response, whether to accept, reject or request a modification of each recommendation.
- 1) If the recommendation is accepted, the appropriate authority shall describe how it will be implemented and the expected timeframe for a final disposition of the recommendation.
 - 2) If the recommendation is rejected, the appropriate authority shall explain its rationale for the rejection.
 - 3) If a modification of the recommendation is requested, the appropriate authority shall explain its rationale for the request and propose an alternate recommendation.
 - 4) The appropriate authority may include any other relevant information it deems necessary to explain and/or describe its response.

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- b) The Inspector General may request additional information and/or updates to a response from the appropriate authority.

Section 3430.140 Release of Summary Reports and Responses

- a) *Summary reports shall be delivered to the appropriate authority, which shall have 20 days to respond to the report [605 ILCS 10/8.5(e)(1)].*
- b) If the Inspector General intends to make a summary report public, the summary report and response shall be redacted for information that may reveal the identity of witnesses, complainants or informants or other information the Inspector General believes should not be made public (see 605 ILCS 10/8.5(e)(3)).
- c) The redacted summary report and documents to be made public shall be forwarded to the appropriate authority and the respondent. Each may offer, within 15 days, suggestions for redaction or provide a response that shall be made public with the summary report. The Inspector General has *the sole and final authority to decide what redactions should be made [605 ILCS 10/8.5(e)(3)].*
- d) After considering the suggestions for redaction, if any, the OIG shall reassess what should be made public and may post the summary report and response on the Authority's website.
- e) Summary reports that result in a 3 day suspension or greater or the termination of the employee shall be made public by presenting the report to the Board of the Authority and posting it on the Authority's website within 60 days after issuance of the summary report (see 605 ILCS 10/8.5(e)(3)).
- f) The Inspector General *may make available to the public any other summary report and any such responses or a redacted version of the report and responses [605 ILCS 10/8.5(e)(3)].* This includes any communications regarding requests for additional information and/or updates to responses between the OIG and the appropriate authority.

Section 3430.150 Bi-Annual Summary of Reports and Investigations

The Toll Highway Inspector General shall provide to the Governor, the Board of the Authority, and the General Assembly a summary of reports and investigations made under this Section no later than March 31 and September 30 of each year.

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- a) *The summaries shall detail the final disposition of the Inspector General's recommendations.*
- b) *The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.*
- c) *The summaries shall also include detailed, recommended administrative actions and matters for consideration by the Governor, the Board of the Authority, and the General Assembly [605 ILCS 10/8.5(m)].*