



**GLENN A. CUNHA**  
INSPECTOR GENERAL

## The Commonwealth of Massachusetts

Office of the Inspector General

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November 7, 2012

The Honorable Steven T. James  
Clerk of the House of Representatives  
State House, Room 145  
Boston, MA 02133

Dear Mr. James:

In compliance with Section 33 of Chapter 30 of the Massachusetts General Laws, the Inspector General respectfully submits four legislative proposals for the 2013 session of the General Court.

1. The first proposal would amend Chapter 12A to allow the Inspector General to make referrals and issue a witness summons without the approval of the Inspector General Council. The current process does not align well with the confidentiality needed for the work that the Inspector General performs.
2. The second proposal would make it a crime to defraud the state or any of its political subdivisions. Currently, no such general fraud statute exists.
3. The third proposal would increase a fine and make technical corrections to Chapter 30B, the Uniform Procurement Law. The technical changes update Chapter 30B to include correct references based on recently enacted amendments to other statutes. There is also an amendment to correct the language of a section of Chapter 30B that was inadvertently changed in a previous legislative session.
4. The fourth proposal would permit housing authorities and redevelopment authorities to require that certain employees participate in the Massachusetts Certified Public Purchasing Official program conducted by the Office of the Inspector General. In light of recent events regarding housing authorities it is vital that purchasing officials understand the public procurement laws.

Respectfully,

A handwritten signature in blue ink that reads "Glenn A. Cunha".

Glenn A. Cunha  
Inspector General

## AN ACT RELATIVE TO THE OFFICE OF THE INSPECTOR GENERAL

SECTION 1. Section 10 of chapter 12A of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following:-

The inspector general may also refer audit or investigative findings to the state ethics commission, or to any other federal, state or local agency, that has an interest in said findings.

SECTION 2. Chapter 12A of the General Laws, as so appearing, is hereby amended by striking out section 15 and inserting in place thereof the following:

Section 15. Whenever the inspector general has reason to believe that a person has information with respect to any matter which is within the inspector general's jurisdiction to investigate, he may require by summons the attendance and testimony under oath of said person.

Such summons shall be served by the inspector general or anyone duly authorized by him, in the same manner as a summons for a witness in a civil case issued on behalf of the commonwealth, and all provisions of law relative to such summons issued in such case shall apply to a summons issued under this section.

A witness required by summons to attend and testify under oath and produce books and records shall be given not less than 48 hours' notice of the time and place of the taking of testimony, unless such notice shall unduly interfere with the conduct of the investigation.

Such witness, at the time of service of said summons, shall be notified of the matter under investigation concerning which such witness will be required to testify and shall be given a copy of the rules of procedures adopted by the inspector general, shall be notified that his testimony

will be taken at a private session, and whether the witness is a subject of an investigation. A subject of an investigation is a person whose conduct is within the scope of the investigation. The failure to furnish such witness with any notice or information required to be given by this section shall cause the said summons to be invalid.

In addition, the witness shall be notified that he has a right to consult with and to have an attorney present at the time the testimony is taken and that he has a constitutional right not to furnish or produce evidence which may tend to incriminate him.

A person summonsed to attend and testify under oath shall appear and testify under oath before the inspector general or an employee of the office who is an attorney admitted to practice in the commonwealth. The attorney general or his designee may also attend.

The terms of any such summons must be reasonable, and the information sought from the summonsed witness must be reasonably related to the subject matter under investigation. No such summons may be issued for purposes of harassment or for any illegitimate or improper purpose. All constitutional and statutory rights and privileges which exist with respect to any summons issued by a court, including the privilege against self-incrimination, shall have the same force and effect with respect to any such summons issued by the inspector general.

A summonsed person may object to the summons served upon him in advance of the return date of the summons by a complaint in the nature of a motion to quash filed in the superior court department of the trial court in Suffolk county. The filing of a complaint in the nature of a motion to quash shall stay all pending summons until further order of the superior court. Any justice of the superior court may, upon application by the inspector general, issue an order to compel the attendance of witnesses summonsed as aforesaid and the giving of testimony under oath in furtherance of any audit or investigation under this chapter in the same manner and to the

same extent as before the superior court. Failure to obey any order of the court with respect to said summons may be punished by said court as contempt.

Any summons issued pursuant to this section shall not be made public by the inspector general or any persons subject to his direction or person designated to hear testimony under this section, and testimony given shall be governed by the same provisions with reference to secrecy which govern grand jury proceedings. Whoever violates the provisions of this paragraph shall be punished by imprisonment for not more than six months in a jail or house of correction or by a fine of not more than \$1000. The previous sentence notwithstanding, disclosure of such testimony may be made to such members of the staff of the office of inspector general as is deemed necessary by the inspector general to assist him in the performance of his duties and responsibilities under this chapter and such members of the staff may be present at the taking of such testimony. The inspector general may also disclose such testimony to the attorney general, the United States Attorney or a district attorney of competent jurisdiction in connection with a referral or criminal proceeding.

AN ACT RELATIVE TO FRAUD

SECTION 1. Chapter 266 of the General Laws, as appearing in the 2010 Official Edition is hereby amended by inserting after section 67C the following section:

Section 67D. Whoever:

(1) defrauds or attempts to defraud the commonwealth, any of its political subdivisions, or any authority established by the general court to serve a public purpose, of any money, property or anything of substantial value, including the wrongful withholding of said money, property or anything of substantial value from any of these entities; or

(2) obtains or attempts to obtain money, property or anything of substantial value, by means of false or fraudulent pretenses, representations, or promises;

shall be punished by a fine of not more than \$10,000 or by imprisonment in the state prison for not more than 5 years, or in the house of correction for not more than 2 1/2 years, or both.

SECTION 2. Section 68 of said chapter 266, as so appearing, is hereby amended, in line 1, by striking out the word “three” and inserting in place thereof the following: 4

AN ACT RELATIVE TO CHAPTER 30B

SECTION 1. Section 1 of chapter 30B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 9 through 10, the words “thirty-eight A1/2 to thirty-eight O, inclusive, of chapter seven” and inserting in place thereof the following: 44 to 57, inclusive, of chapter 7C

SECTION 2. Section 1 of chapter 30B of the General Laws, as so appearing, is hereby amended by striking out subsection (5) of paragraph (b) in its entirety and inserting in place thereof the following:

(5) a contract for the purchase of materials, under specifications of the Massachusetts department of transportation highway division, and at prices established by the division, pursuant to advertising and bidding for such purpose, in connection with work to be performed under the provisions of chapter 81 or chapter 90;

SECTION 3. Said section 1 of said chapter 30B, as so appearing, is hereby amended by striking out, in line 103, the words “subclause (r)” and inserting in place thereof the following:- subclause (s)

SECTION 4. Said section 1 of chapter 30B of the General Laws, as so appearing, is hereby amended by striking out, in lines 127 through 128, the words “thirty-eight A1/2 to thirty-eight O, inclusive, of chapter seven” and inserting in place thereof the following: 44 to 57, inclusive, of chapter 7C

SECTION 5. Section 16 of said chapter 30B, as so appearing, is hereby amended by striking out, in line 43, the words “forty J of chapter seven” and inserting in place thereof the following: 38 of chapter 7C

SECTION 6. Section 17 of said chapter 30B, as so appearing, is hereby amended, in line 12, by striking the words “two thousand dollars” and inserting in place thereof the following:-  
\$10,000

SECTION 7. Section 18 of said chapter 30B, as so appearing, is hereby amended by striking out the definition “Disadvantaged vendor” and inserting in place thereof the following:  
“Disadvantaged vendor”, any business beneficially owned by one or more minority persons in conformity with clauses (1) to (4), inclusive, of the definition of “Minority business” set forth in section 6 of chapter 7C, and any business beneficially owned by one or more women as provided in the definition of “Women-owned business” set forth in said section 6 and any business beneficially owned by 1 or more veterans as provided in the definition of “veteran-owned business” as set forth in section 6.

SECTION 8. Said chapter 30B, as so appearing, is hereby amended by striking out section 23 and inserting in place thereof the following section:-

Section 23. (a) Notwithstanding any general or special law to the contrary and to the extent permitted by federal law, a governmental body may, by a majority vote, establish a preference for the procurement of products or services by businesses, as defined in section 3A of chapter 23A, with their principal place of business in the commonwealth.

(b) If a governmental body establishes such a preference, the procurement officer responsible for procuring products and services on behalf of the governmental body shall effectuate such preference for the procurement in: (i) advertising for bids, contracts or otherwise and making reasonable efforts to facilitate the purchase of such products or services; and (ii) purchasing products or services by businesses, as defined in said section 3A of said chapter 23A, with their principal place of business in the commonwealth, unless the price of such goods or services exceed, by more than 10 percent, the price of such goods or services produced by businesses with their principal place of business outside of the commonwealth.

AN ACT RELATIVE TO OPERATING AGENCIES

SECTION 1. Section 11 of chapter 121B, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 72, the word “and”.

SECTION 2. Section 11 of chapter 121B, as so appearing, is hereby amended by inserting, in line 74, after the word “systems” the following:

; and

(p) To ensure, notwithstanding the provisions of section 27C of chapter 29 or of any special or general law to the contrary, that the executive director and the procurement officer for each operating agency participate in the Massachusetts certified public purchasing official program conducted by the office of the inspector general in order to earn a Massachusetts public purchasing official certificate