



SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION ENABLING LEGISLATION AS AMENDED

SEPT
2010

Selected Laws Relating to the Special Inspector General for Iraq Reconstruction

This is a “conformed” text of Section 3001 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106 [H.R. 3289]; 117 Stat. 1209, 1234–1238; 5 U.S.C. app. 8G note), as cumulatively amended.

The texts of other important free-standing provisions are also set out as notes within, or at the end of, the main text.

Partial text of Public Law 108–106 [H.R. 3289], 117 Stat. 1209, 1234–1238, 5 U.S.C. app. 8G note, approved November 6, 2003; amended by Public Law 108–375 [Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005; H.R.

4200], § 1203, 118 Stat. 1811, 2079–2043, approved October 28, 2004; Public Law 109–102 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006; H.R. 3057], § 599, 119 Stat. 2172, approved November 14, 2005; Public Law 109–364 [John Warner National Defense Authorization Act for Fiscal Year 2007; H.R. 5122], §§ 1054, 1071, 120 Stat. 2083, 2397, 2398–2043, approved October 17, 2006; Public Law 109–440 [Iraq Reconstruction Accountability Act of 2006; S. 4046] § 2, 120 Stat. 3286–3287, approved December 20, 2006; Public Law 110–28 [U.S. Troop Readiness, Veterans; Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007; H.R. 2206], § 3801, 121 Stat. 112, 147, approved May 25, 2007; and by Public Law 110–181 [National Defense Authorization Act for Fiscal Year 2008; H.R. 4986], § 1221, 122 Stat. 3, 234–236, 371–373, approved January 28, 2008

AN ACT Making emergency supplemental appropriations for defense and for the reconstruction of Iraq and Afghanistan for the fiscal year ending September 30, 2004, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2004, and for other purposes, namely:

TITLE III—SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION SEC. 3001. SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION.

(a) **PURPOSES.**—The purposes of this section are as follows:

- (1) To provide for the independent and objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated or otherwise made available for the reconstruction of Iraq.
- (2) To provide for the independent and objective leadership and coordination of, and recommendations on, policies designed to—
 - (A) promote economy efficiency, and effectiveness in the administration of such programs and operations; and
 - (B) prevent and detect waste, fraud, and abuse in such programs and operations.
- (3) To provide for an independent and objective means of keeping the Secretary of State and the Secretary of Defense fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress for corrective action.

(b) **OFFICE OF INSPECTOR GENERAL.**—There is hereby established the Office of the Special Inspector General for Iraq Reconstruction.

- (c) **APPOINTMENT OF INSPECTOR GENERAL; REMOVAL.**—(1) The head of the Office of the Special Inspector General for Iraq Reconstruction is the Special Inspector General for Iraq Reconstruction (in this section referred to as the ‘Inspector General’), who shall be appointed by the Secretary of Defense, in consultation with the Secretary of State.
- (2) The appointment of Inspector General shall be made solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.
 - (3) The nomination of an individual as Inspector General shall be made not later than 30 days after the date of the enactment of this Act.

Note: § 1203(b) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) provided: “CONTINUATION IN OFFICE.—The individual serving as Inspector General of the Coalition Provisional Authority as of the date of the enactment of this Act may continue to serve in that position after that date without reappointment under paragraph (1) of section 3001(c) of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004, but remaining subject to removal as specified in paragraph (4) of that section.”

- (4) The Inspector General shall be removable from office in accordance with the provisions of section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.).
- (5) For purposes of section 7324 of title 5, United States Code, the Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.
- (6) The annual rate of basic pay of the Inspector General shall be the annual rate of basic pay provided for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

Note: § 4(a)(3) of the Inspector General Reform Act of 2008 (Public Law 110–409) provided, notwithstanding any other provision of law, that the annual rate of basic pay of certain inspectors general, including the Special Inspector General for Iraq Reconstruction, shall be that of an Inspector General as defined under section 12(3) of the Inspector General Act of 1978, as amended (the rate payable for level III of the Executive Schedule, plus 3 percent) and that those inspectors general may not receive any cash award or bonus.

(d) **ASSISTANT INSPECTORS GENERAL.**—The Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

- (1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations supported by amounts appropriated or otherwise made available for the reconstruction of Iraq; and
- (2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

(e) **SUPERVISION.**—(1) Except as provided in paragraph (2), the Inspector General shall report directly to, and be under the general supervision of, the Secretary of State and the Secretary of Defense.

- (2) No officer of the Department of Defense, the Department of State, or the United States Agency for International Development shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation related to amounts appropriated or otherwise made available for the reconstruction of Iraq or from issuing any subpoena during the course of any such audit or investigation.

(f) DUTIES.—(1) It shall be the duty of the Inspector General to conduct, supervise, and coordinate audits and investigations of the treatment, handling, and expenditure of amounts appropriated or otherwise made available for the reconstruction of Iraq, and of the programs, operations, and contracts carried out utilizing such funds, including

- (A) the oversight and accounting of the obligation and expenditure of such funds;
 - (B) the monitoring and review of reconstruction activities funded by such funds;
 - (C) the monitoring and review of contracts funded by such funds;
 - (D) the monitoring and review of the transfer of such funds and associated information between and among departments, agencies, and entities of the United States, and private and nongovernmental entities; and
 - (E) the maintenance of records on the use of such funds to facilitate future audits and investigations of the use of such funds.
- (2) The Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Inspector General considers appropriate to discharge the duty under paragraph (1).
- (3) In addition to the duties specified in paragraphs (1) and (2), the Inspector General shall also have the duties and responsibilities of inspectors general under the Inspector General Act of 1978.
- (4) In carrying out the duties, responsibilities, and authorities of the Inspector General under this section, the Inspector General shall coordinate with, and receive the cooperation of, each of the following:
- (A) The Inspector General of the Department of State.
 - (B) The Inspector General of the Department of Defense.
 - (C) The Inspector General of the United States Agency for International Development.

(g) POWERS AND AUTHORITIES.—(1) In carrying out the duties specified in subsection (f), the Inspector General shall have the authorities provided in section 6 of the Inspector General Act of 1978 including the authorities under subsection (e) of such section.

- (2) The Inspector General shall carry out the duties specified in subsection (f)(1) in accordance with section 4(b)(1) of the Inspector General Act of 1978.

(h) PERSONNEL, FACILITIES, AND OTHER RESOURCES.—(1) The Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Inspector General, subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, and may exercise the authorities of subsections (b) through (i) of section 3161 of title 5, United States Code (without regard to subsection (a) of such section).

- (2) The Inspector General may obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-15 of the General Schedule by section 5332 of such title.
- (3) To the extent and in such amounts as may be provided in advance by appropriations Acts, the Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Inspector General.
- (4) (A) Upon request of the Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Inspector General, or an authorized designee.
- (B) Whenever information or assistance requested by the Inspector General is, in the judgment of the Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the Secretary of State or Secretary of Defense, as appropriate, and to the appropriate committees of Congress without delay.
- (5) The Secretary of State or Secretary of Defense, as appropriate, shall provide

the Inspector General with appropriate and adequate office space within the Department of Defense or at appropriate locations of the Department of State in Iraq, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(i) REPORTS.—(1) Not later than 30 days after the end of each fiscal-year quarter, the Inspector General shall submit to the appropriate committees of Congress a report summarizing for the period of that quarter and, to the extent possible, the period from the end of such quarter to the time of the submission of the report, the activities of the Inspector General and the activities under programs and operations funded with amounts appropriated or otherwise made available for the reconstruction of Iraq. Each report shall include, for the period covered by such report, a detailed statement of all obligations, expenditures, and revenues associated with reconstruction and rehabilitation activities in Iraq, including the following:

- (A) Obligations and expenditures of appropriated funds.
- (B) A project-by-project and program-by-program accounting of the costs incurred to date for the reconstruction of Iraq, together with the estimate of the Department of Defense, the Department of State, and the United States Agency for International Development, as applicable, of the costs to complete each project and each program.
- (C) Revenues attributable to or consisting of funds provided by foreign nations or international organizations, and any obligations or expenditures of such revenues.
- (D) Revenues attributable to or consisting of foreign assets seized or frozen, and any obligations or expenditures of such revenues.
- (E) Operating expenses of agencies or entities receiving amounts appropriated or otherwise made available for the reconstruction of Iraq.
- (F) In the case of any contract described in paragraph (2)—
 - (i) the amount of the contract or other agreement;
 - (ii) a brief discussion of the scope of the contract or other agreement;
 - (iii) a discussion of how the contracting department or agency identified, and solicited offers from, potential contractors to perform the contract, together with a list of the potential contractors that were issued solicitations for the offers; and
 - (iv) the justification and approval documents on which was based the determination to use procedures other than procedures that provide for full and open competition.

(2) A contract described in this paragraph is any major contract or other agreement that is entered into by any department or agency of the United States Government that involves the use of amounts appropriated or otherwise made available for the reconstruction of Iraq with any public or private sector entity for any of the following purposes:

- (A) To build or rebuild physical infrastructure of Iraq.
- (B) To establish or reestablish a political or societal institution of Iraq.
- (C) To provide products or services to the people of Iraq.

(3) The Inspector General shall submit to the appropriate committees of Congress semiannual reports meeting the requirements of section 5 of the Inspector General Act of 1978. The first such report for a year, covering the first six months of the year, shall be submitted not later than July 31 of that year, and the second such report, covering the second six months of the year, shall be submitted not later than January 31 of the following year.

(4) The Inspector General shall publish each report under this subsection in both English and Arabic on the Internet website of the Secretary of State and the Secretary of Defense.

(5) Each report under this subsection may include a classified annex if the Inspector General considers it necessary.

(6) Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

- (A) specifically prohibited from disclosure by any other provision of law;
- (B) specifically required by Executive order to be protected from disclo-

sure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(j) **REPORT COORDINATION.**—(1) The Inspector General shall also submit each report under subsection (i) to the Secretary of State and the Secretary of Defense.

(2) (A) Not later than 30 days after receipt of a report under paragraph (1), the Secretary of State or the Secretary of Defense may submit to the appropriate committees of Congress any comments on the matters covered by the report as the Secretary of State or the Secretary of Defense, as the case may be, considers appropriate.

(B) A report under this paragraph may include a classified annex if the Secretary of State or the Secretary of Defense, as the case may be, considers it necessary.

(k) **TRANSPARENCY.**—(1) Not later than 60 days after the date of the submittal to Congress of a report under subsection (i), the Secretary of State and the Secretary of Defense shall jointly make copies of such report available to the public upon request, and at a reasonable cost.

(2) Not later than 60 days after the date of the submittal to Congress under subsection (j)(2) of comments on a report under subsection (i), the Secretary of State and the Secretary of Defense shall jointly make copies of such comments available to the public upon request, and at a reasonable cost.

(l) **WAIVER.**—(1) The President may waive the requirement under paragraph (1) or (3) of subsection (i) for the inclusion in a report under such paragraph of any element otherwise provided for under such paragraph if the President determines that the waiver is justified for national security reasons.

(2) The President shall publish a notice of each waiver made under this subsection in the Federal Register no later than the date on which the reports required under paragraph (1) or (3) of subsection (i) are submitted to Congress. The reports required under paragraph (1) or (3) of subsection (i) shall specify whether waivers under this subsection were made and with respect to which elements.

(m) **DEFINITIONS.**—In this section—

(1) the term ‘appropriate committees of Congress’ means—

- (A) the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate; and
- (B) the Committees on Appropriations, Armed Services, Foreign Affairs, and Oversight and Government Reform of the House of Representatives; and

(2) the term ‘amounts appropriated or otherwise made available for the reconstruction of Iraq’ means amounts appropriated or otherwise made available for any fiscal year—

(A) to the Iraq Relief and Reconstruction Fund, the Iraq Security Forces Fund, and the Commanders’ Emergency Response Program authorized under section 1202 of the National Defense Authorization for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3455–3456); or

(B) for assistance for the reconstruction of Iraq under—

- (i) the Economic Support Fund authorized under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.);
- (ii) the International Narcotics Control and Law Enforcement account authorized under section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291); or
- (iii) any other provision of law.

(n) **FUNDING.**—(1) Of the amounts appropriated for fiscal year 2004 for the Operating Expenses of the Coalition Provisional Authority in title II of this Act, \$75,000,000 shall be available to carry out this section.

(2) The amount available under paragraph (1) shall remain available until expended.

Note: Chapter 6 of Title I of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234) appropriated funds for the Office of Inspector General of the Department of State, of which \$24,000,000 was to be transferred to the Special Inspector General for Iraq Reconstruction for reconstruction oversight, to remain available until September 30, 2007.

Chapter 6 of Title I of U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110–28) appropriated funds for the Office of Inspector General of the Department of State, of which \$35,000,000 was to be transferred to the Special Inspector General for Iraq Reconstruction for reconstruction oversight, to remain available until December 31, 2008.

In the Supplemental Appropriations Act, 2008 (Public Law 110–252), Subchapter A (“Supplemental Appropriations for Fiscal Year 2008”) of Chapter 4 of Title I appropriated funds for the Office of Inspector General of the Department of State, of which \$2,500,000 was to be transferred to the Special Inspector General for Iraq Reconstruction for reconstruction oversight, to remain available until September 30, 2009. Subchapter B (“Bridge Fund Supplemental Appropriations for Fiscal Year 2009”) of that Chapter appropriated funds for the Office of Inspector General of the Department of State, to become available on October 1, 2008 and remain available through September 30, 2009, of which \$36,500,000 was to be transferred to the Special Inspector General for Iraq Reconstruction for reconstruction oversight.

Title XI of the Supplemental Appropriations Act, 2009 (Public Law 111-32), appropriated funds for the Office of Inspector General of the Department of State, of which \$7,000,000 was to be transferred to the Special Inspector General for Iraq Reconstruction for reconstruction oversight, to remain available until September 30, 2010.

Title I of Division F of the Consolidated Appropriations Act, 2010 (Public Law 111-117), appropriated funds for the Office of Inspector General of the Department of State, of which \$23,000,000 shall be for the Special Inspector General for Iraq Reconstruction for reconstruction oversight,” for the fiscal year ending September 30, 2010.

(o) **TERMINATION.**—(1) The Office of the Inspector General shall terminate 180 days after the date on which amounts appropriated or otherwise made available for the reconstruction of Iraq that are unexpended are less than \$250,000,000.

(2) The Special Inspector General for Iraq Reconstruction shall, prior to the termination of the Office of the Special Inspector General under paragraph (1), prepare a final forensic audit report on all amounts appropriated or otherwise made available for the reconstruction of Iraq.

Note: Section 842 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) provided:

SEC. 842. INVESTIGATION OF WASTE, FRAUD, AND ABUSE IN WARTIME CONTRACTS AND CONTRACTING PROCESSES IN IRAQ AND AFGHANISTAN.

(a) **AUDITS REQUIRED.**—Thorough audits shall be performed in accordance with this section to identify potential waste, fraud, and abuse in the performance of—

- (1) Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan; and
- (2) Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan.

(b) **AUDIT PLANS.**—

(1) The Department of Defense Inspector General shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection

(a) (1), consistent with the requirements of subsection (g), in consulta-

tion with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

(2) The Special Inspector General for Iraq Reconstruction shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(2) relating to Iraq, consistent with the requirements of subsection (h), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

(3) The Special Inspector General for Afghanistan Reconstruction shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and

task and delivery orders covered by subsection (a)(2) relating to Afghanistan, consistent with the requirements of subsection (h), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

(c) PERFORMANCE OF AUDITS BY CERTAIN INSPECTORS GENERAL.—The Special Inspector General for Iraq Reconstruction, during such period as such office exists, the Special Inspector General for Afghanistan Reconstruction, during such period as such office exists, the Inspector General of the Department of Defense, the Inspector General of the Department of State, and the Inspector General of the United States Agency for International Development shall perform such audits as required by subsection (a) and identified in the audit plans developed pursuant to subsection (b) as fall within the respective scope of their duties as specified in law.

(d) COORDINATION OF AUDITS.—The Inspectors General specified in subsection (c) shall work to coordinate the performance of the audits required by subsection (a) and identified in the audit plans developed under subsection (b) including through councils and working groups composed of such Inspectors General.

(e) JOINT AUDITS.—If one or more audits required by subsection (a) and identified in an audit plan developed under subsection (b) falls within the scope of the duties of more than one of the Inspectors General specified in subsection (c), and such Inspectors General agree that such audit or audits are best pursued jointly, such Inspectors General shall enter into a memorandum of understanding relating to the performance of such audit or audits.

(f) SEPARATE AUDITS.—If one or more audits required by subsection (a) and identified in an audit plan developed under subsection (b) falls within the scope of the duties of more than one of the Inspectors General specified in subsection (c), and such Inspectors General do not agree that such audit or audits are best pursued jointly, such audit or audits shall be separately performed by one or more of the Inspectors General concerned.

(g) SCOPE OF AUDITS OF CONTRACTS.—Audits conducted pursuant to subsection (a)(1) shall examine, at a minimum, one or more of the following issues:

- (1) The manner in which contract requirements were developed.
- (2) The procedures under which contracts or task or delivery orders were awarded.
- (3) The terms and conditions of contracts or task or delivery orders.
- (4) The staffing and method of performance of contractors, including cost controls.
- (5) The efficacy of Department of Defense management and oversight, including the adequacy of staffing and training of officials responsible for such management and oversight.
- (6) The flow of information from contractors to officials responsible for contract management and oversight.

(h) SCOPE OF AUDITS OF OTHER CONTRACTS.—Audits conducted pursuant to subsection (a)(2) shall examine, at a minimum, one or more of the following issues:

- (1) The manner in which contract requirements were developed and contracts or task and delivery orders were awarded.
- (2) The manner in which the Federal agency exercised control over the performance of contractors.
- (3) The extent to which operational field commanders were able to coordinate or direct the performance of contractors in an area of combat operations.
- (4) The degree to which contractor employees were properly screened, selected, trained, and equipped for the functions to be performed.
- (5) The nature and extent of any incidents of misconduct or unlawful activity by contractor employees.
- (6) The nature and extent of any activity by contractor employees that was inconsistent with the objectives of operational field commanders.
- (7) The extent to which any incidents of misconduct or unlawful activity were reported, documented, investigated, and (where appropriate) prosecuted.

(i) INDEPENDENT CONDUCT OF AUDIT FUNCTIONS.—All audit functions under this section, including audit planning and coordination, shall be performed by the relevant Inspectors General in an independent manner, without consultation with the Commission established pursuant to section 841 of this Act. All audit reports resulting from such audits shall be available to the Commission.

Note: Section 7 of the Special Inspector General for the Troubled Asset Relief Program Act of 2009 (Public Law 111-15) provided:

SEC. 7. COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY.

The Special Inspector General for Iraq Reconstruction and the Special Inspector General for Afghanistan Reconstruction shall be a members [sic] of the Council of the Inspectors General on Integrity and Efficiency established under section 11 of

the Inspector General Act of 1978 (5 U.S.C. App.) until the date of termination of the Office of the Special Inspector General for Iraq Reconstruction and the Office of the Special Inspector General for Afghanistan Reconstruction, respectively.

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